

THE GREAT SANHEDRIN

A study of the origin, development,
composition and functions of the
Bet Din ha-Gadol during the
Second Jewish Commonwealth.

By

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To the revered memory of my parents,
Joseph and Lena Hoenig,
whose religious faith and devotion
have always been my inspiration.

Preface

Outside of its historical significance to scholars interested in those ancient institutions which played a great role in the annals of Judaism and early Christianity, the problem of the Great Sanhedrin of the Second Jewish Commonwealth is of particular interest today because of the establishment of the State of Israel. There are many people who contend that the need has now arisen for a central religious institution in Israel to interpret Jewish laws in accordance with the spirit of the ancient Sanhedrin, to create a synthesis of law and life and to bring conformity to these elements in Israel and in the diaspora. Others, however, decry the desirability of having a Sanhedrin reconstituted at this time, that is, of projecting an ancient institution into modern times. All arguments, *pro* and *con*, must of necessity be based upon a knowledge of the ancient Great Sanhedrin — an historic analysis of which is attempted in this volume.

The influence of my teacher, Professor Solomon Zeitlin, has permeated my thoughts and has developed in me the keen desire to explain historically many phases of Second Commonwealth life. In the course of the many years of my close association with Professor Zeitlin, both as a pupil and friend, I have absorbed so many of his views and ideas that they have become part of my own knowledge and thinking. I am indeed greatly indebted to him.

I also wish to express my gratitude to my teachers, colleagues and friends who have graciously assisted me in every way: President Abraham A. Neuman and Professor Joseph Reider of Dropsie College; President Samuel Belkin of Yeshiva University, Professor Pinkhos Churgin, Dean of its Teachers Institute, and Mr. Samuel L. Sar, Dean of Men; Dr. Jacob I. Hartstein, Dean of the Graduate Division, Professor Samuel K. Mirsky, editor of *Talpioth*; my brother, Mr. Moses M. Hoenig; my brother-in-law, Dr. Nathan Drazin and my friends, Dr. David de Sola Pool, Dr. Michael Bernstein and Mr. Dan Vogel, and many others who have read the manuscript. Particularly am I beholden to my friend, Professor Harry M. Orlinsky of the Hebrew Union College—Jewish Institute of Religion for his many valuable suggestions. Their participation, of course, does not involve any responsibility.

PREFACE

I am likewise grateful to the staffs of the libraries of The Dropsie College, Yeshiva University, Jewish Theological Seminary, Jewish Institute of Religion, Union Theological Seminary and New York Public Library for placing at my disposal all the volumes necessary in the preparation of this work.

To my wife, who has often been burdened with the task of typing and retyping the manuscript and who has shown deep patience towards my pursuit of this study, I am exceedingly thankful. She shares in the happiness of seeing the book in press.

The guidance of the late President of Yeshiva and Yeshiva College, Doctor Bernard Revel, whose unyielding devotion to tradition led me to attain an abiding love for rabbinic learning, and also the inspiration of my beloved parents, who made every sacrifice to see me advance on the path of knowledge and Torah, are remembered here. Their direction in the ways of the Halakah has had a lasting influence upon me.

Finally, I want to make known that this work was first presented in fulfillment of the doctoral requirements at The Dropsie College under the guidance of the late Doctor Cyrus Adler.

During the years since, this work has been expanded. The original chapter on "The Dissolution of the Sanhedrin" was printed in Hebrew in *Horeb*, September, 1936. The chapter on "The Number" was read and discussed on December 26, 1939, at the American Academy of Jewish Research; an article "Sanhedrin" was also included in the *Universal Jewish Encyclopedia*, IX, 1943; and the chapter on "The Name" was partly presented in the *Jewish Quarterly Review*, October, 1946. All of these chapters have been revised and brought up to date. In order not to overburden the text, many *Excursuses* and *Notes* have been added.

The publication of the volume is made possible in part by a grant from the Sol Bearman Estate, and I am very grateful to the executors for their personal encouragement and stimulus to this expression of Jewish scholarship.

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Introduction

PROBLEM

During the era of the Second Jewish Commonwealth (*ca.* 141 B.C.E.—70 C.E.) there existed in Judea institutions called by the Greek name *synedrion*. The term generally refers to any sort of assembly, gathering, council or conference, and is found as such in classical Greek literature. In Jewish tradition, however, “Sanhedrin” as a Hebraization of *synedrion* usually referred to a religious judicial body, a *Bet Din*. Because of the importance of these Jewish tribunals to the beginnings of Christianity and to the development of Jewish law and life, the nature of these *synedria* became a matter of investigation and controversy among scholars.¹ Differences of opinion resulted from apparent discrepancies among virtually contemporaneous sources, rabbinic and non-rabbinic; the former for the most part are recorded in the tannaitic literature and the latter mainly in Josephus and in the Gospels.

Such conflicting opinions were coupled with the questions of the origin of the Jewish court and the personality of its president. According to the mishnaic interpretation there existed in Judea a judiciary system, at the head of which was a body called *Sanhedrin Gedolah* (Great Sanhedrin) or *Bet Din ha-Gadol* (The Great Court).² The heads of this supreme court, especially before the beginning of the Common Era, were always two men known as *Zugot* (Pairs). One was the *Nasi* (Prince or President) and the other the *Ab Bet Din* (Father of the Court or Vice-President).³ On the other hand, from the interpretations of the texts of Josephus and the Gospels, many scholars obtained a picture of the high priest as the one who directed the sessions of a *synedrion*, particularly in the decades immediately before the destruction of the Temple.

The study of rabbinic sources reveals that the Great Sanhedrin as a tribunal of religious law and justice was composed of men learned in the law. From Josephus and the Gospels, however, many scholars gleaned that “chief priests, scribes and elders,” presumably Sadducees and Pharisees as well as men not learned in the law, comprised the institution administering all functions of the state, executive and judicial.

For more than a century scholars have sought to solve the

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problem of conflicting sources.⁴ New Testament students generally regarded the mishnaic Sanhedrin as fictional; the rabbinic accounts simply reflected the Bet Din at Jabneh, which set itself up as a continuation of the high priest's synedrion. Rabbinic scholars, on the other hand, suggested various solutions such as two opposing heads in the same institution, a rabbinic committee of law within the framework of the Jewish state-council or two types of council—political and religious, Sadducean and Pharisaic, permanent and temporary, or a priestly and a lay body. To this day the investigations continue in the various phases of the study of the ancient Great Sanhedrin of Jerusalem, with the hope of dispelling the clouds of confusion in the divergent sources, ultimately throwing more light on the last chapter in the life of Jesus as well as on the distinct growth of Jewish oral law and the functions of the ancient Bet Din.

EVALUATION OF THE SOURCES

The progress made by scholars in the past few decades in the study of "The Intertestamental Period" and the resulting new concepts in the interpretation of history in general and of events of that critical religious period in particular have been factors in the preparation of this volume. The new methods of application in pure historical research and the clarification of many details of the period of the Second Temple, as revealed in the tannaitic works and the Gospels as well as in archeological discoveries, prompt a re-examination of the Sanhedrin problem in the present day. This is undertaken despite the many previous attempts at the reconciliation of the sources.

Such study must be undertaken not from the narrow angle of the existence of the Sanhedrin or of the interpretation of a particular text. Rather, it must encompass details of Jewish law and practice, the jurisdiction of governmental institutions, the events of the period, and the relation of the Jewish people to the ruling power. In addition, one must study all the facts dwelling on the scope of the Sanhedrin as derived from rabbinic and non-rabbinic texts and from the internal evidence gleaned from the knowledge of the period and the date of the composition of the various sources.

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Scholars are limited in their source material, and there can be but few startling revelations in any new research. But from the process of gathering all the reinterpreted strands and from the rearrangement of all the details, there emerges a new and complete picture of the Great Sanhedrin, regarding its origin, development, composition and functions.

Three main problems present themselves in the investigation of the sources:

1. Do the sources depicting "synedrion" pertain to all the periods of the Second Commonwealth, thereby demonstrating a continuous existence of the body?
2. Do the sources describe only some particular or specific institution (not necessarily the traditional body) which flourished in the days of their writing?
3. Do we find in examining the sources (which may be of much later origin than the existence of the body) only a description of the traditional institution as it was believed to have been by the author at the time of his writing (and therefore colored in the light of the author's own time)?

Our analysis should establish how the name "synedrion" had been used in the different contexts and at various times; how it was adopted into Hebrew or Aramaic terminology; and whether it applied to the same body or to a variety of councils. A misunderstanding of any particular term, or the lack of knowledge of the time and manner in which "synedrion" was used in any source, might well distort the picture of the origin and nature of the institution.

In the past, students of the Great Sanhedrin overlooked an important factor of interpretation. Scholars like Kuenen, Schürer, and Enslin⁵ were prone to regard the Jewish sources as containing only a silhouette of the Sanhedrin. According to them, the school of Jabneh was "translated" by the rabbis into a picture of the Sanhedrin of the Second Commonwealth. Hence these scholars accepted the Greek and non-tannaitic sources, concurring with H. Danby,⁶ that the procedure described in the Mishnah was academic and a throwback from the Sanhedrin, as it existed after the de-

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struction of the Temple, to the council as conceived to be in the life-time of Jesus. A more critical approach, however, was followed by G. F. Moore who declared, "The Gospels themselves are the best witness to the religious and moral teaching of the synagogue in the middle forty years of the first century (C.E.), and the not infrequent references, with approval or dissent, to the current Halakah are evidence of the rules approved in the schools of the law and taught to the people. It is this relation between the Gospels and the teaching of the rabbis, whether tacitly assumed or criticized and controverted, which makes them the important source they are for a knowledge of Judaism of their time, and on the other hand makes the rabbinical sources the important instrument they are for the understanding of the Gospels. The Gospels with the first part of the Acts of the Apostles are thus witness to authentic Jewish tradition. . . ." ⁷

It is not correct to maintain that the Tannaim spoke only of an ideal and a theoretical Sanhedrin and completely colored its picture to coincide with this ideal. In the days of Jabneh there still lived sages who were familiar with the Bet Din ha-Gadol which flourished before 70 C.E. They might have lived only one or two generations later at the most, but they still remembered traditions concerning that institution in which they were so vitally interested. Surely, after 70 C.E., the rabbis aimed to retain in their councils in Jabneh and Usha many of the features and characteristics of the Great Sanhedrin as it had existed in earlier decades. Often they sought to reach their ideal from historical precedent.⁸ A proper examination of rabbinic sources must therefore result in revealing to us when the picture of the Sanhedrin refers to Jabneh and when it represents the tradition of the earlier period. Legend should be sifted from fact, theory from practice, constitutional stipulation from actual observance, and true events from haggadic coloring.

In accepting the authenticity of rabbinic tradition it should be remembered that the Talmud was primarily interested in the Halakah, in the Pharisaic point of view, and less in political events, though references were made to such events in the course of narration or for the sake of the halakic interpretation. The events of

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the period and references to the Great Sanhedrin should be extracted from the laws for the purpose of seeing how they fit into the general picture of the Second Temple era—whether they are controverted or sustained by historical facts.

Furthermore, it is known that the oral traditions on the Sanhedrin go back to times long before the actual writing of the Mishnah, thus giving to the references in the tannaitic works weight and authenticity.⁹

On the other hand, it should be remembered that the non-rabbinic, Greek sources pictured a council as it existed in the days of their own composition. The earliest documentary sources of the Gospels (written, it is believed, not before the days of the later procurators, *ca.* 60 C.E.)¹⁰ pictured a body as it was in the days when the high priest had his own synedrion and was an agent of the procurators.¹¹ It may be that this fact was seized upon and amplified to portray the entire period of the Second Jewish Commonwealth. Scholars like Kuenen and Schürer, among others, coming upon the picture of a special synedrion of the high priest which existed directly before the destruction of the Temple and which dealt with cases of sedition as recorded in the Greek sources, mistakenly transferred it to trace the history of an institution that dealt particularly with Jewish legislative, halakic, interpretive, judicial and religious affairs.

In evaluating the non-tannaitic sources, one should remember their lack of interest in Jewish procedure. Josephus, for example, wrote for the Roman world and it was, above all, the relationship between Judea and Rome which interested him. He presented as a rule only those facts which were of political interest and mentioned only generally the institutions which were not strange to the Hellenistic mind. Hence one can understand why he made no definite mention of the halakic Great Sanhedrin.

It is also well known that Josephus used many outside sources and extraneous materials¹² such as Strabo and Nicolaus of Damascus, who were not interested in or not familiar with the Sanhedrin. These sources, therefore, did not command the valuable information of the rabbinic authorities with reference to their own halakic institution.

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Josephus was not primarily interested in presenting to the Roman eye the internal organization of the Jewish people. He treated this only casually, for, as he himself declared, he had contemplated writing a separate volume on this subject of law.¹⁸

With such recognition of the relative value of the different sources, the present treatise seeks to reconstruct the picture of the traditional Jewish body, the Bet Din ha-Gadol of Jerusalem in the Gazit-Chamber. Among the many questions to be investigated are: Did the Great Sanhedrin really exist? How did it originate? And when? What were the reasons for its emergence? Were there any changes in the body at different times? How do the sources describe such changes or stages in its history? How long did the Sanhedrin exist? Who were its leaders? Were there many bodies or groups, and how were they distinguished? What was the number of its membership? What were its functions and duties? And where was its meeting place?

Particular study will be made of the name of the body and of the different synonyms it bore, with a view to differentiating between the Great Sanhedrin or Bet Din ha-Gadol and any other *synedrion* that might have existed at any time. The question of competence in law and the exercise of authority by various bodies is important. The jurisdiction of different powers in early Jewish history should be made clear to understand the place and nature of the body. The relationship of the Great Sanhedrin to the system of the Jewish government, whether it was a superior court with judicial functions or a general council of state with full power in executive, legislative and judicial fields, also should be ascertained. Furthermore, it is necessary to determine whether the position of the high priest was political, religious or both.

The effect of the different philosophies current in the Second Commonwealth upon the functioning of the court should also be studied to obtain a clear picture of its inception and composition. And, finally, the evolution of the Bet Din in the days of the Second Temple must be traced to understand how it influenced events, or conversely, how it was influenced by them during the entire period. These questions are embraced in *The Great Sanhedrin*.

THE GREAT SANHEDRIN

Part I

CHAPTER I

THE NAME — SYNEDRION

From four types of sources—classical literature, papyri, Judeo-Greek writings and tannaitic works—we may expound a broad definition or method of use of the Greek term—"synedrion."

IN CLASSICAL LITERATURE

In Greek literature "synedrion"¹ has been applied basically to the following forms: (1) A conference, a general assembly or a council of war, (2) A magisterial or judicial body, and (3) The Areopagus, the highest permanent council in Athens.

Examples of the first case may be found in Herodotus,² Xenophon,³ Isocrates,⁴ Sophocles,⁵ Thucydides,⁶ Polybius⁷ and Strabo.⁸ Instances of the second form⁹ can be established from the Minor Attic orators of the fourth century B.C.E.—Lysias, Isocrates, Aeschines, Lycurgus and Demosthenes—who pleaded as lawyers before established tribunals.¹⁰

In the third case cited, it is interesting to note a similarity between the Areopagus and the Bet Din ha-Gadol. Both had their seats in the most prominent locations in the capital cities. The Bet Din was in the Temple of Jerusalem; the Areopagus in the Acropolis of Athens.¹¹ Moreover, both were final arbiters of legal interpretation and courts trying cases which impinged on the sovereign power.¹² Even as the Areopagus¹³ was called synedrion, with its position of superiority over the lower courts, the *dikasteria*, so also the Bet Din ha-Gadol came to be known as the *Sanhedrin Gedolah*, Great Synedrion.

IN PAPYRI

That "synedrion" referred to permanent and not merely temporary or occasional tribunals is evidenced by papyri of the Ptolemaic era.¹⁴ These papyri relate to such criminal and commercial prob-

lems as theft, assault, and weights and measures. Other papyri demonstrate the usage of the term for circuit court,¹⁵ magistrate court,¹⁶ and land-survey councils.¹⁷ The *thesmoothetae* or lawgivers and scribes participated in many of these bodies, which is attestation that these synedria were not extraordinary councils, but rather established tribunals of law.¹⁸ Hence it may be accepted that during the pre-Christian era, in the vernacular, the *koine* or daily speech of the Greeks, "synedrion" meant not merely an assembly but also designated, specifically, a court of law.

IN JEWISH-GREEK SOURCES

Judeo-Hellenistic works cast a more distinct light than the two previous sources on the nature of the Jewish synedrion, the adoption of the term, and its usage.

The word does not occur in the Greek translation of the Pentateuch. It is found only in those books which were translated later than the Pentateuch. There are only eleven instances in the Septuagint¹⁹ where the term "synedrion" is used: eight times in Proverbs and once each in Judges, Jeremiah and Psalms, as translations of the Hebrew שְׁעָרָה, דִין, שְׁדֹולָה. In the English Bible *sod* is often rendered as council or assembly; *din* as strife, plea, cause or judgment; and *sha-ar* as gate (place of justice).

To the ancient Greek translators, however, "synedrion," used as a translation of those Hebrew words, connoted the realm of judgment. This position is supported by Proverbs, where the term is found most frequently. Since it is generally accepted that a translation of Proverbs already existed about 100 B.C.E.,²⁰ it may be assumed that a definite institution concerned with justice and well known to the translators existed about that time. It was this knowledge^{20a} which prompted them to apply "synedrion" in those eleven instances wherever the context conveyed definitely the idea of justice or "sitting in judgment." When the Pentateuch and the earlier books of the Bible were translated, no specific synedrion for judgment existed; therefore, the term is lacking in the translation of these books.

A similar deduction can be made from the examination of

"synedrion" in the Apocrypha. In the *Letter of Aristeas*, written in the early Ptolemaic period, about 132 B.C.E. or earlier,^{20b} the word "synedrion" is used to denote the meeting called for the business of the translation of the Pentateuch.^{20c} In the Greek translation of the work of Ben Sira, the expression is recorded three times,²¹ in the general sense of "sitting in an assembly" or in the specific sense of "sitting in judgment." Ben Sira originally was written in Hebrew about 190 B.C.E. but translated into Greek about 130 B.C.E.²² Thus, it appears that the general term "synedrion" for assembly and its specific application to councils of judgment was then recognized in Judea by Jewish-Greek readers. We have already seen that such application was made long before, in the Greek literature of the Minor Attic orators.

"Synedrion" is also mentioned in II Maccabees,²³ IV Maccabees,²⁴ and Judith.²⁵ These, however, refer only to the foreign councils of Demetrius, Antiochus and Holofernes respectively. The use of the term "synedrion" in the Psalms of Solomon,²⁶ where the context deals with justice,²⁷ however, may indicate the existence of a Jewish institution about Pompey's time.²⁸

The following conclusions may, therefore, be drawn from our examination of the word "synedrion" in the Septuagint and the Apocrypha. About the year 130 B.C.E., during the time of Ben Sira's grandson, and the contemporaneous composition of Aristeas, the verbal meaning of "synedrion" in the Greek ("to sit together") was already known in Judea. However, even earlier, in the time of the Hasmoneans or the writing of Judith and corresponding to the time of the activities of Alcimus and Demetrius, there was knowledge in Palestine of the use of the term "synedrion" for foreign councils. Probably, the word itself came into usage still earlier with the adoption by the Tobiads of the Hellenistic mode of life and the resulting influence of Greek culture and language.²⁹ It might have come through the medium of the *koine* of the papyri. At some later date this Greek word was added to Hebrew or Aramaic terminology. Thus, when adopted, "sanhedrin" became synonymous with the Hebrew "Bet Din."

Philo and especially Josephus also throw much interesting light on the usage of the term "synedrion." In their days, contem-

poraneous with the existence of the Great Sanhedrin, the term was already fixed. Though Philo often used it in the general sense of assembly or council, the specific connotation of "synedrion" as a court of justice was not strange to him. In *Legato ad Gaium*,⁸⁰ Philo complains that Caligula acted not as a judge (*dikastes*) sitting with his synedrion, but as an accuser (*kategoros*). In *De Vita Mosis*,⁸¹ telling the biblical story of the one who transgressed the Sabbath in the desert, he declares that the person was arrested "and brought before the ruler [Moses], beside whom were the priests seated (*synedreuon*) in judgment."⁸² Thus in Philo, "synedrion" is definitely associated with judgment.

In Josephus we find "synedrion" mentioned for the first time in *Antiquities*, with reference to the Septuagint translation.⁸³ But this reference is a copy of the *Letter of Aristeas* which we have already noted. The first historical usage of "synedrion" in Josephus is in the matter of Gabinius' division of the land into five councils.⁸⁴ However, this bore only on Roman administration and was not of Jewish origin.^{84a} Although the usage of the Greek term in Palestine at that time is an interesting feature, it does not clarify the specific nature of a Jewish body. It is only similar in usage to the councils of Demetrius, Antiochus and Holofernes, recorded in the Apocrypha.⁸⁵

Of greater importance, however, are the synedria which served as tribunals in the life of Herod: a synedrion of dignitaries tried Herod's sons for disloyalty;⁸⁶ a synedrion of friends tried Pherora's wife for aiding the Pharisees against Herod and for alienation of affections;⁸⁷ and a synedrion of friends and relatives tried Antipater.⁸⁸ Interestingly, in Antipater's case as well as in that of Herod's other sons, Josephus used in his earlier work, the *War*, the term "dikasterion"⁸⁹ (trial court) by the side of "synedrion."⁴⁰ In *Antiquities*, however, he calls these only "synedria."⁴¹

Though a similarity to Hellenistic modes⁴² may be found in the expressions "synedrion of friends" or "synedrion of dignitaries," no clear evidence of a regularly constituted and established court can be deduced from these sources describing Herod's conduct of justice. It is true that Herod simply improvised these councils in order

to legalize the execution of his sons and relatives. "Synedrion," therefore, as recorded here by Josephus meant only "assembly." Nevertheless, the specific purpose of such assembly was to try an accused person.

Josephus also uses "synedrion" in *Antiquities* when he tells the story of Hyrcanus being charged by Herod with the crimes of bribery and treason.⁴³ He relates that Herod showed Hyrcanus' letter to the synedrion and thereafter put him to death. It cannot be determined from this record whether the synedrion was a "tribunal of friends" similar to the other instances, or whether it was an established court. In fact, the entire record is vague because in the *War* no "synedrion" is mentioned for this event.⁴⁴ That source reveals only that Herod, after charging Hyrcanus with the crime, ordered that he be led away and slain. Such vagueness prompts one to reject any assumption of the Jewish nature of this synedrion. The accusations of treason and conspiracy point only to Roman interests in the case.⁴⁵

The isolated instance in the life of Herod in which there is evidence of a Jewish synedrion, a specific court established for justice and in which there actually was a judicial trial before "men (*andres*) of the synedrion," was the one before which Herod himself was summoned as a young man.⁴⁶ This apparently was an inferior trial court and not the Great Sanhedrin, inasmuch as it is recorded that Herod was summoned as a commoner, while into the Great Sanhedrin were brought only special cases involving high officials.^{46a}

Josephus also speaks in *Antiquities* of the trial of James by the high priest who appointed a "synedrion of judges (*kriton*)."^{46b} Here, too, "synedrion" is a general term signifying council, though its specific purpose was to judge. The fact established by S. Zeitlin⁴⁷ that the assembly of judges was appointed shows that it was not the regular institution — the Great Sanhedrin.

"Synedrion" is also mentioned often in the *War*, but these references are only to Roman councils. These include Augustus' inquiry into the rival claims of Herod's heirs^{47a} and also Titus' council of war.^{47b} On the other hand, Josephus tells of a synedrion convened

by Agrippa II to give the Levites the privilege of wearing garments like the priests. It is interesting to note that Josephus charged this synedrion with changing the country's laws,⁴⁸ thereby hinting that it was a court contrary to Jewish practice. Therefore, this could not have been the Great Sanhedrin.

In the *Life*, however, the term is used with reference to the synedrion in Jerusalem^{48a} and also to the councils of friends assembled by Josephus and by those opposed to his leadership.^{48b} Though the many synedria of Josephus' rule in Galilee may mean conferences, the particular synedrion of Jerusalem, also called *koine* and *boule*, refers to the provisional government established after the victory over Cestius. It dealt with political and state matters, but it did not apply to the Bet Din ha-Gadol of halakic legislation.

Josephus' records of other trials (the trial of Miriam⁴⁹ and the trial of Zechariah by the Zealots⁵⁰) do not mention "synedrion." Hence, these references are of little help in establishing the use of the term. The features of the trials definitely show that they have no relevancy to the Great Sanhedrin.

All that may be gained from Josephus is that he, as all Hellenistic writers, used "synedrion" as a generic term: a meeting, conference, political assembly, council of war or tribunal.⁵¹ S. Zeitlin^{51a} suggests that Josephus may not have known the term "synedrion" for trial court when he wrote the *War*, but applied it twenty years later, in 93 C.E.,^{51b} when he wrote *Antiquities*. We cannot accept this assumption, for in the *War* Josephus uses "synedrion" interchangeably with "dikasterion" (trial court).^{51b} To coin the additional name "synedrion" to mean "trial court" was surely unnecessary, for such connotation already existed among the classical Greeks, as is evident in the usage of the noun in the Attic Orators. Josephus was acquainted with Greek literature and followed classical models, being aided by literary assistants and collaborators.^{51c} For instance, in the *War*, he copied phrases from Demosthenes, Herodotus, Xenophon and Thucydides, among others.^{51d} It is believable, then, that Josephus already recognized that "synedrion" could be applied to a dikasterion or *dike* (trial) and therefore he used these terms interchangeably even in his earlier work. Nevertheless, in no case

does Josephus reveal to us any reference to the traditional Great Sanhedrin of the Gazit-Chamber.⁵²

Turning to the Synoptic Gospels, we find seven references to "Synedrion":⁵³ three in Mark, three in Matthew and one in Luke. The nature of these synedria is not very clear. Only councils of the high priest to which Jesus was summoned are mentioned. The only clear instance where "synedrion" refers to an established Jewish court is in the Sermon on the Mount (Matt. 5.22): "Whosoever is angry with his brother without a cause shall be in danger of the judgment (*krisei, uidicio*) and whosoever shall say to his brother *Raka* shall be in danger of the synedrion (*concilio*)."⁵⁴ Undoubtedly *krisei* and *synedrion* are used harmoniously. So also, in Mark 13.9 and Matthew 10.17, established courts may be recognized: "They shall deliver you up to the *synedrion* and in the *synagogue* ye shall be beaten."

C. C. Torrey projects the view that the Synoptic Gospels were written in Aramaic before the destruction of the Temple.⁵⁵ If that is the case, it is probable that the original words in the Sermon were: בֵּית־דִּין and סְנָהָדרִין; later translated as *krisei* and *synedrion*. The latter word required no translation because of its accepted usage both in the Aramaic and the Greek. To maintain, with S. Zeitlin,⁵⁶ that the original Aramaic text had בֵּית־עָצָה is difficult for this technical term is not found anywhere, whereas בֵּית־דִּין and סְנָהָדרִין are well known. From the association of the two words we may infer that the term "sanhedrin" was definitely used in the last century C.E. in Judea to indicate a court.

In the Fourth Gospel,^{55a} "synedrion" is mentioned only once, as a conference; but there is no reference to any judgment, deliverance for trial or discussion of law. Again, no definite picture of the Great Sanhedrin is revealed in the Gospels.

From this examination of the different sources it is to be concluded that classical literature as well as the vernacular of the papyri testify to the popularity of the term "synedrion" as a trial court. Probably, in the second and first centuries before the Common Era, when Jewish and Greek civilizations met, "synedrion" was also adopted into Judeo-Hellenistic literature as a technical term,⁵⁶ and became a synonym of Bet Din in ancient Judea.⁵⁷

IN TANNAITIC SOURCES⁵⁸

In most instances the Talmud uses the term "Bet Din" to mean a court. The specific terms ב"ד שבירושלים, ב"ד שלשכת הגויות, ב"ד הגזול refer to the highest court. "Sanhedrin" is also found as a synonym in parallel texts of the Mishnah.⁵⁹

Interestingly, the many references mentioning "sanhedrin" pertain to the supreme court in Jerusalem existing before 70 C.E. and sitting in the Gazit-Chamber of the Temple.⁶⁰ Perhaps, "Bet Din ha-Gadol" was the original Hebrew expression for the institution. However, as noted, through the spread of Greek terminology in Jewish circles as a result of Hellenization, *synedrion* became Hebraized or Aramaized into "sanhedrin" and subsequently, was popularly adopted. The Greek technical terms for court, *dikastērion* or *kritērion*,^{60a} would have been more exact translations of "Bet Din" and should have been selected, but since these Greek terms applied generally to lower tribunals, specifically to trial courts, they were not used. The all-inclusive term "synedrion" was better mated with the Jewish concept of the Bet Din ha-Gadol as the highest synedrion in the state.

Though the term "sanhedrin" is used very frequently in tannaitic literature after 70 C.E., especially by Rabbis Jose and Judah (ca. 150 C.E.), we never find the expressions "Sanhedrin b' Jabneh" or "Sanhedrin b'Usha." S. W. Baron's notion that "To invest the new center of learning with superior sanctity R. Johanan [ben Zakkai] . . . took over for its council the venerable name of Sanhedrin"^{60b} . . . cannot be maintained. The term is not applied specifically to the Academies⁶¹ of the second century even though, as religious courts under the patriarchs, they assumed the supervision of all Jewish life and represented Judea before the Roman authorities. Perhaps, with the loss of statehood and the Temple, and also because of the temporary antipathy toward foreign influence and Greek terminology,⁶² "sanhedrin" was not officially applied to the contemporary institutions of the patriarchate. The significance of "sanhedrin" in the Hebrew had already become an historic one, reminiscent of the Bet Din ha-Gadol of Jerusalem in the Gazit-Chamber.⁶³ Only much later was "synedrion"^{63a}

applied to the patriarchate, as revealed in the Theodosian Code.^{63b}

THE GEROUSIA

In an analysis of the terms used for the high court, many scholars were of the opinion that "gerousia"⁶⁴ originally was the name for the institution known later as the Great Sanhedrin. They regarded the two terms as synonymous.⁶⁵ This is incorrect, for in all the sources — Septuagint, Apocrypha, Josephus and Acts — "gerousia" is applied in Palestine only to an institution of "elders" of a very early period. It is last mentioned for Jonathan's day, about 144 B.C.E., whereas "synedrion" is first used historically in Josephus' story of Gabinius (57 B.C.E.) as well as in the references to Pompey (63 B.C.E.) found in the Psalms of Solomon. Thus, *gerousia* is not recorded after the Greek (or early Hasmonean) period, whereas *synedrion* definitely is revealed as a Jewish institution in the Roman (Pompey) period.

CHAPTER II

THE NATURE OF THE GREAT SANHEDRIN

The Great Sanhedrin was a religious body devoted to the interpretation of the biblical and traditional law, the Halakah. Evidence for this assertion can best be obtained by analyzing the different forms of administration during the times of the Second Temple, determining by comparison with other administrative bodies the singular place held by this institution during the various decades of the epoch.

From the Restoration (516 B.C.E.) till the Hasmonean Revolt (165 B.C.E.) there was a theocracy.¹ The high priest at its head directed ritual and civil matters through his gerousia. This Judean institution was vested with full power,² as shown in the Book of Judith.^{2a} However, the influence of the gerousia varied inversely with the strength of the high priest. When the sons of Tobias, during the days of Onias III (*ca.* 180 B.C.E.) controlled the state through their supervision of the market, collection of taxes and exercise of other financial privileges, the high priest's domain came gradually to be limited to the Temple service and interpretation of the religious law.³ This cleavage of power, resulting from an internal struggle, can be interpreted as the beginning of the separation of the political from the religious functions of the state — a division which became more apparent as the years went by. The gerousia existed, as we noted in the previous chapter, down to the time of Jonathan (*ca.* 144 B.C.E.), and is not mentioned as a Palestinian institution thereafter. Nevertheless, during these early decades no Sanhedrin existed. All functions, religious as well as political, were controlled by the gerousia.⁴

Under the early Hasmoneans (141-103 B.C.E.) a commonwealth existed.⁵ The theocracy disappeared and a democratic form of government took its place. Judas Maccabeus was able to resist

the Syrians because of the support he received from the common people. Hence, they were given a voice in the new government.⁶ After the wars, by acclaim of the people,⁷ Simon the Hasmonean became the head of the commonwealth, and the political functions of the state were administered by the *Heber*.⁸ In this way, state matters were distinctly separated from religious and ritual affairs. But in this latter function a careful distinction was made;^{8a} the Temple ritual was directed by the high priest, while a new body was formed to supervise the interpretation of the religious law in the state. The activity of the Bet Din of the Hasmoneans and the ordinances of Jose ben Joezer,⁹ who functioned as Nasi at that time, testify to the existence of such a religious body.

A monarchy flourished under the later Hasmoneans (103-63 B.C.E.).¹⁰ These rulers were autocratic and would not tolerate interference.¹¹ Any political council that might have existed then was part of this scheme of rule. Yet there is definite evidence even then of a Sanhedrin supervising the spiritual life of the Jews. This is to be deduced from the judicial activities of Simon ben Shattah¹² who lived in the reign of Alexander Jannai.

In the opinion of Josephus, when Gabinius began his rule in 57 B.C.E. and organized five separate synedria, "The Jews were now freed from monarchic authority and were governed by an aristocracy."¹³ As we have noted above, this record by Josephus is the first historical usage of the term "synedrion." These synedria might have been constituted as Roman military district courts to prevent any united uprising. They did not include religious courts, for Gabinius was not interested in any religious functions or in the interpretation of the Halakah. He left control of the Temple to the priests and religious interpretation to experts in the law. The activities of Shemaiah and Abtalion¹⁴ during this period imply the existence of a special body of Halakah. If Gabinius had established a religious body, it probably would not have been accepted by the people. Any deliberate religious innovation by a foreign power would have been violently opposed. Thus it is evident that even under the aristocratic administration set up by Gabinius for only a short period — ten years later Caesar again united the country politically under Hyrcanus II — there existed a definite

severance of secular from religious functions. The Jews then were disunited administratively by virtue of the action of Gabinius who sought only to advance Roman interests. Still, there existed for them an institution that made for religious unity. This was the Sanhedrin of the later Zugot, the two heads of the Bet Din in each of the five consecutive generations, from about 141 B.C.E. till 10 C.E.

A monarchy functioned under Herod and his son (37 B.C.E.—6 C.E.).¹⁶ The kings had their own personal advisory councils.¹⁶ However, they refrained as much as possible from interfering with religious rights. This point is illustrated by the marked activity of Hillel,¹⁷ a contemporary of Herod. The autocrats yielded in religious matters, for their concern primarily was in political affairs. Herod intervened only when he felt that there was a sign of treason or sedition, as in the case of some of the Pharisees who tore down the Roman eagle from the Temple gates.¹⁸ To him such an act was one tainted with political scheming and not a display of opposition to idolatrous images over the Temple entrance.

Under the procurators (6-66 C.E.), as Josephus noted, "The government became an aristocracy and the high priests were entrusted with a dominion over the nation."¹⁹ This dominance of an aristocracy of priests in the state is also attested to by the Tosefta: "Woe unto me of the House of Boethus and of the House of Ishmael ben Phabi who are high priests, their sons treasurers, their sons-in-law controllers and their servants come and beat us with sticks."²⁰ It is further corroborated by Josephus' similar description: "About this time [ca. 52 C.E.] King Agrippa gave the high priesthood to Ishmael who was the son of Phabi. And now arose a sedition between the high priests and the principal men of the multitude of Jerusalem, each of whom got them a company of the boldest men and of those that loved innovations and became leaders to them. And when they struggled against one another, they did it by casting reproachful words and by throwing stones. There was nobody to reprove them and these disorders persisted in the city after a licentious manner as if it had no government over it."²¹

In religious matters, however, in this era of procuratorship, a Bet Din functioned for the nation. Evidence for this is found in the leadership of the Hillelite family.²² The Sadducean priests dominated Temple activities and the political scene; but in matters of religious law they too were subservient to the Pharisaic school of thought and influence on the Great Sanhedrin.²³

Only in the period of the theocracy, from the Restoration to the Hasmonean Revolt, was there an all-functioning body; but this was the gerousia.²⁴ The high priest and his council held all power, including political authority, though a tributary of Persia, Egypt or Syria.^{24a} After the establishment of the Hasmonean commonwealth in 141 B.C.E., and through the different forms of administration until the destruction of the Temple in 70 C.E., the political institutions changed: under the Hasmoneans, the *Heber ha-Yehudim* — the people's democratic association — governed by the side of the high priest. Under the later Hasmoneans, there was the council of the autocratic monarchs. Under Gabinius there was the Roman rule. Under Herod, a personal council functioned when he chose; and under the procurators, when Judea became a Roman province, the aristocratic high priests had their own synedrion. At the outbreak of the war of 66 C.E., the *boule* of Jerusalem was the council directing the affairs of state. And when this government was overthrown and a new provisional one set up, a coalition council, called synedrion by Josephus,^{24b} became the supreme state power.

In summary, we note the variety of political administrative techniques and the constancy of a religious council for spiritual affairs. Such was not a Temple council. For that purpose there was a special tribunal known as the *Bet Din shel kohanim* (of priests)^{24c} which was limited to ritual practice and sacrificial service. The religious-legislative body was the Great Sanhedrin. Its specific nature throughout all the decades of the Second Commonwealth was that of a Bet Din, a court of law and interpretation, a religious halakic institution composed of scholars.²⁵

CHAPTER III

ORIGINS AND OPINIONS

BIBLICAL SOURCES¹

David Hoffmann, relying upon Numbers 11.16; Deuteronomy 17.8 ff.; and II Chronicles 19, believed that the sources reveal that a higher court, a "Sanhedrin Gedolah," functioned continually from the days of Moses to the Herodian period.^{1a} Such assignment of the origin of the Great Sanhedrin of the Second Commonwealth to biblical days, however, is open to question.² Though there is mention of judges and elders in the text of the Bible, there is no evidence of any distinct and separate court in the early centuries of Jewish history paralleling the halakic supreme court of the Second Commonwealth. Only special individuals such as kings, elders and prophets assisted by subordinates meted out justice. But there was no special and distinct Great Sanhedrin of Halakah interpreting the law.³

In Numbers it is recorded that Moses had elders to aid him in judging the people. This does not establish proof of a Great Sanhedrin. Moses himself was the supreme judicial authority and delegated responsibility to subordinates, giving them magisterial powers to decide commonplace issues.^{3a} The delineation in the Bible is but the tribal system of elders. Later rabbinic interpretations used this as a constitutional source for the judiciary.^{3b}

An examination of Deuteronomy 17.8 ff., shows that an appearance before the high priests, judges and Levites for their decisions is there referred to. There is no hint of the existence of a distinct judicial body. The priests were the judges; judicial functions were still part of the priesthood and were not relegated to a separate institution.

The policy of Jehoshaphat (*ca.* 850 B.C.E.), as described in II Chronicles 19.8, also seemed to be proof of the Great Sanhedrin's antiquity. However, it should be understood that the Chronicler's picture is based entirely on Deuteronomy. Inasmuch as Jehoshaphat sought to fulfill all the precepts of the Law, he recognized the judiciary system as one of the vital commandments in the Torah. Moreover, the term *shofetim* (judges) in the Bible does not necessarily refer to magistrates and justices whose duty it was only to legislate and interpret the law, as in the Great Sanhedrin. These *shofetim* constituted the officials of the land; they were the elders, directing all affairs.⁴ They could be found in the various cities of Judah, and especially in Jerusalem where Jehoshaphat had his seat of monarchy.

Furthermore, it should not be inferred from the appointments by Jehoshaphat of Amariah as ecclesiastic and spiritual head and of Zebadiah as royal administrator⁵ that these men came to preside over an institution where ecclesiastical and monarchical jurisdictions were kept separate and apart by a Nasi and Ab Bet Din.^{5a} Jehoshaphat was not a priest, and he therefore appointed Amariah to preside in the Temple and to represent him in all matters of ritual. Zebadiah, on the other hand, had been empowered by the king to rule on matters dealing with domestic and national affairs. In Solomon's reign, too, we find appointees for ritual and for state administration under the king.^{5b} The high priest represented Solomon at Temple service; the royal administrator collected taxes and supervised the economy of the state.

The tendency of the rabbis to include ancient biblical personalities as members of a Sanhedrin is known as haggadic dicta. This explains the talmudic assertions concerning leaders convening or presiding over the Sanhedrin; as in the cases of Samuel and David.^{5c} These leaders had their councils, but they were not on a level with the Bet Din ha-Gadol of the Second Commonwealth.

We also cannot infer that the Sanhedrin existed even in the fourth century B.C.E., when Chronicles is assumed to have been written.⁶ Theocracy was still the form of government in Palestine at that time. This, as we already know, implies a gerousia and not a separate legislative Sanhedrin.⁷

THE SOFERIC (PERSIAN) AGE

Unable to assign the origin of the Sanhedrin to the days either of Moses or of King Jehoshaphat, Graetz advanced the view that, after the return from the Babylonian Exile, the Soferim, seeking to enforce the law, established a council called Bet Din.⁸ This had judicial, religious and administrative powers. The name "sanhedrin" was applied to this council under Roman rule at a later date.

This opinion, however, is untenable for, though the time was ripe and it would have been propitious to form such a body after the leadership of Ezra and Nehemiah,⁹ there is no indication of any special court then. The sources give ample proof that under the entire Persian rule, the high priest, supreme in his theocratic government, still interpreted the law.¹⁰

In this era of the all-powerful priestly gerousia, nothing would have been gained by empowering a separate body of priests, thereby limiting the hereditary rights of the others. A division of the functions of the state for the different groups of the priesthood would result in a weakening of the gerousia.

Many scholars, as Lauterbach,¹¹ indeed maintained that there was a distinct class of Soferim which flourished from the period of Ezra to Simon I (*ca.* 333 B.C.E.). Yet if we examine the term Soferim in the Mishnah, we find that it is applied by the Tannaim who lived after 70 C.E. to their predecessors, the rabbinic teachers, who functioned up to the destruction of the Second Temple.¹² Similarly, the non-rabbinic sources, Josephus and the Gospels, refer to the religious teachers of the Second Commonwealth as *grammateis*, scribes,¹³ meaning the teachers of the oral tradition—the leaders of the Pharisees. These Soferim, indeed, in the period of the theocracy and the gerousia, may have been priestly scribes. In the later decades of the Second Commonwealth when Pharisaism thrived, the name *hakamim*, however, was used by the scribes to distinguish their scholarly pursuit of the law from the merely ritualistic occupation of the priests.¹⁴ Relying on these sources, the period of the Soferim definitely cannot be limited to the Persian era,¹⁵ nor can one infer from its application an early origin for the Bet Din ha-Gadol.

ALEXANDER THE GREAT AND THE JEWS

It has been held that the beginnings of the Great Sanhedrin could be deduced from the records regarding Alexander the Great and the Jews. However, the sources¹⁶ do not mention "sanhedrin"; reference is made only to his negotiations with the high priest and his aides. As the high priest's companions, the talmudic story has "the nobles of Israel";^{16a} Josephus has "body of citizens";^{16b} and the scholion on *Megillat Ta'anit*, "nobles of Jerusalem and a thousand counsellors (*bouleutai*)."^{16c} All of these simply represent the elders of the gerousia.

Likewise, the assignment of the origin of the body to the Greek period immediately following Alexander the Great cannot be accepted. All evidence points to the historic fact that the gerousia prevailed till Hasmonean days with the same complete functions, though beset with political intrigue.

To Z. Frankel¹⁷ this talmudic story of Alexander the Great's meeting with the Jews indicated that the high priest, Simon I, organized the Sanhedrin. He argued that when Simon I accepted Alexander the Great's authority, he had to dissolve the Keneset ha-Gedolah, the Great Assembly, and consequently, after the wars, a new body called "sanhedrin" was set up.

This thesis also cannot be sustained. There is no basis for the story of Simon's submission to Alexander. In all probability it was Jaddua, the high priest, who welcomed Alexander in accordance with Josephus' account.^{17a} The Talmud refers to another incident, that of Simon II appearing before Antiochus III.¹⁸ But neither is there an allusion to any synedrion during that incident.

Furthermore, there is no evidence of the abolition of the Great Assembly. On the contrary, proof exists of a Keneset ha-Gedolah in the later periods of the Second Commonwealth.¹⁹ This institution was but a sporadic assembly convened at critical moments, like the gathering of Ezra and Nehemiah.²⁰ At the same time there functioned a continuous body like the gerousia. The Great Assembly in itself was not a permanent institution, and hence cannot be identified with or regarded as a predecessor of the Great Sanhedrin.^{20a}

The events of the Ptolemaic era and the loyalty of the Jews to the Egyptian kings have prompted Felix Blum²¹ to assign the beginnings of the Sanhedrin to the middle of the third century B.C.E. The Ptolemaic kings allowed the Jews full freedom in the exercise of their religion. Consequently, it is asserted that a Greek name like "synedrion" would not have shocked their sensibilities. The creation of a body with a Greek title in a later period, such as in the Hellenistic-Hasmonean period or in the time of Gabinius, would have been unlikely, because the Jews then were antagonistic to all that was Greek.

These views, again, are not sound. The Greek name "synedrion" does not appear in the Jewish historical records of the Ptolemaic period to denote a legal institution.^{21a} Furthermore, the autonomy bestowed by the Ptolemaic monarchs did not call for the establishment of a separate judicial court. The gerousia was nominally independent of the Ptolemaic rule and served the purpose very well in its administration of all Jewish affairs.

SELEUCIDEAN RULE AND THE EPISTLE OF ANTIOCHUS

Lauterbach²² and Herford²³ held that the Sanhedrin originated in 196 B.C.E. with the change of government from the Ptolemies to the Seleucids. A stronger Greek element had come into power, and with it a state of anarchy in the religious life of the people. This was due to the disappearance of the Soferim. Therefore, these scholars contend, there was no central body in control of the religious life of the Jewish community. The period of anarchy came to an end in or about 196 B.C.E. when the Sanhedrin was organized to become the great council of the Jewish people.

This theory cannot be maintained. It is an historic fact that in passing from the Ptolemaic to the Seleucidean rule there was no change in the form of government or in the constitution of the Jewish state. The Seleucidean conquest effected only a different political rule; no state of anarchy resulted, for the gerousia continued to function. Furthermore, at that time there was no decline or disappearance of the Soferim. We have seen above that there is no evidence of a particular era of Soferim or of a central body of special teachers in the fourth and third centuries B.C.E. Rather,

it is to be asserted, a period of anarchy arose later as a result of the machinations of Simon, the Temple captain, and of the sons of Tobias who sought to usurp for themselves the power of the high priest. But this usurpation by anarchy occurred after 196 B.C.E. and not before.

Many scholars, seeking to set 196 B.C.E. as the date for the establishment of the Great Sanhedrin, used as their source the Epistle of Antiochus, quoted in Josephus.²⁴ This is most surprising, for the Epistle does not even mention "synedrion." It speaks only of the gerousia and of priests welcoming the king. It was this body which was still the central administrative body, and not a Sanhedrin.

Lauterbach also asserted in his interpretation of the Epistle that "besides the priests another authoritative body existed — a senate or gerousia of which laymen were also members, and this body was the Sanhedrin." This assumption is incorrect, not only because it equates "sanhedrin" with "gerousia" but because Lauterbach misinterprets the contents of the document: the gerousia and priests are mentioned therein together with the scribes of the Temple and its sacred singers. This does not mean that there existed besides the priests another distinct body — the gerousia. The priests, many of whom probably were members of the gerousia, are mentioned only because of their connection with the Temple. Thus Antiochus not only favored the dignitaries of the gerousia, who welcomed him, but also the entire Temple staff,^{24a} including priests who were not of the gerousia — scribes and singers. Later, he also freed the inhabitants of Jerusalem from paying taxes for one year. Hence there is no proof at all that this Epistle or Edict of Privileges referred to the origin of the Great Sanhedrin.

Neither can this document be used in support of L. Finkelstein's contention that the Great Assembly convoked by the righteous high priest, Simon II, established a new departure by admitting plebeians into the gerousia, or that the Edict, referring to "scribes of the Temple and the singers of the sanctuary," meant that the scribes already were recognized members of the Sanhedrin.²⁵ On the contrary, the scribes are noted in the letter only as functionaries of the Temple; no reference to a "sanhedrin" is made. Nor

can it be said that the Great Assembly of Simon "created a most important decision of a constitutional nature; they replaced the ancient gerousia with a new Sanhedrin which was to include in its membership plebeian scribes as well as patrician elders." A constitutional change did not come about in 196 B.C.E., but rather much later — after the democratic revolt of the Hasmoneans.^{25a} Before that time, with the dominance of the priests and the aristocracy, such transformation could not occur.

THE ZADOKITE FRAGMENT

The *Zadokite Fragment* also has been used²⁶ to support the theory that the Great Sanhedrin originated in 196 B.C.E. The argument is based on the following passage: "And in the period of wrath, 390 years after He had given them into the hand of Nebuchadnezzar, King of Babylon, He visited them and He made to spring forth from Israel and Aaron a root of his planting to inherit the land." As the exile took place in 586 B.C.E., it is maintained, according to the *Fragment*, that 390 years later, "the root of Israel and Aaron sprang forth," and this is presumed to be the Sanhedrin originating in 196 B.C.E.

An examination of the text, however, reveals that "Sanhedrin" is not mentioned. The phrase "root of his planting"²⁷ is but an adoption of a similar phrase in Isaiah.²⁸ Furthermore, the historicity of the *Fragment* has already been questioned by scholars.²⁹ It may be a Karaitic work of the Middle Ages.³⁰ In the face of these doubts, we cannot accept it as a record of events of the Second Commonwealth to demonstrate the origin of the halakic Great Sanhedrin.

CHAPTER IV

THE EMERGENCE OF THE BET DIN HA-GADOL

We have seen that the institution known as *gerousia* in Palestine was not mentioned after the Greek period (*ca.* 143 B.C.E.). However, the body called *synedrion* already is referred to in Jewish sources at the beginning of the Roman period (*ca.* 63 B.C.E.). Hence the establishment of the Great Sanhedrin must have occurred somewhere in these four-score years.

One must negate the possibility that the Great Sanhedrin which was organized during this period was strictly a political-administrative council. Our study of the types of administration in the Jewish state in the many decades of the Second Temple era has already shown that during the century of 160-60 B.C.E. the political functions of the various Hasmonean governments were controlled by bodies other than the Bet Din ha-Gadol. At first, the early Hasmonean rulers, together with the *Heber ha-Yehudim*, guided the political destinies of the country.¹ Later, the autocratic Hasmonean monarchs dictated.

Furthermore, as noted above, the Bet Din ha-Gadol possessed functions of a religious and judicial nature. It devoted itself purely to interpreting the Law; it was not a mere extension or development of the unchanging, aristocratic, all-administrative gerousia, nor was it identical with the sporadic or transitory Keneset ha-Gedolah.

Our problem now is: When and for what reasons did this halakic supreme court of the Second Commonwealth, with its subsidiary courts, originate?

RESULTS OF THE HASMONEAN REVOLT

It is a well-known fact that the Hasmonean Revolt brought profound changes in the life of the Jews.² Not only was political independence won from the Seleucidean Greeks but a popular

government replaced an aristocratic regime. The successes of Judas Maccabeus and his brothers had been made possible by the support of the masses. Consequently, the latter strove for social equality and a voice in the government; this was granted by the creation of the Heber ha-Yehudim, the people's commonwealth. The common people, led by the Pharisees, now took a more active interest in the administration of state affairs.³ The priestly caste, on the other hand, lost its former all-embracing power so evident in the central gerousia. Its members were now largely limited to and identified with the Temple and its ritual, their irrevocable inheritance from the days of Aaron.

This severance of religion from the state, though it blossomed with the Hasmonean victories, really had its inception when Simon, the Temple captain, and the sons of Tobias assumed the power over the high priest, Onias III (*ca.* 180 B.C.E.).⁴ The first seed was planted earlier, when his grandfather, the high priest Onias II, was compelled to transfer his dominant political sway to Joseph the son of Tobiah, the collector and controller of the market (*ca.* 230 B.C.E.). Onias II's power was limited to his position as religious head. Thus, political and religious elements were first separated.⁵

During the Hasmonean revolt a further delimitation of priestly functions developed. The priests who had functioned in the Temple since the Restoration in 536 B.C.E. had also served as teachers of the law and as judges of trials between persons.⁶ But association of some of these leaders with Hellenistic culture during the Tobiad period ultimately caused a rupture between the ecclesiastical or the ritualistic and the judicial and educational functions. Not only were the Hellenistically-inclined priests uninterested in the interpretation of the Halakah to the extent of renouncing their heritage as Soferim or "teachers of the Law (Book)," but the democratic impulse in the Hasmonean revolt resulted in discharging the priesthood from its role of sole control of the Torah and bearer of the tradition.

As an exclusive class, the priests no longer could dictate the meaning and interpretation of Jewish law. The prophetic phrase, "for the priest's lips should keep knowledge, and they should seek

the law at his mouth,”⁷ did not apply fully, though the priest still was considered “the messenger of the Lord of Hosts.” The Hasmonean revolt thus resulted in a three-fold separation of the forces in the Jewish state: (1) the administrative or political, (2) the ecclesiastical or ritual, and (3) the halakic or Torah-legislative.⁸

A distinct division of these functions did not exist during the days of Judas Maccabeus and his brother Jonathan (165-143 B.C.E.). The country still was in the throes of the war. Jonathan’s position as head of the Jewish state was only a *de jure* recognition by Demetrius of Syria. Time was necessary for the full establishment of the new government. Jonathan was forced by the conditions of his rule to keep a strong administrative body alive. Hence the old, all-powerful gerousia still appears in some sources for the regimes of Judas and Jonathan.

When Simon, the last of the Hasmonean brothers, became ruler of the Jewish state by acclaim of the people,⁹ a new form of government finally came into existence and the old gerousia disappeared, not to be recorded any more.¹⁰

For this period the Talmud speaks of a tribunal of the Hasmoneans, but this body is recognized only as a temporary institution serving immediate needs.¹¹ When, for instance, the problem arose about the defiled stones of the altar, the *Bene Hashmonaim* directed that such be pulled down and segregated.¹² Likewise, the *Bet Din shel Hashmonaim* enacted laws relating to intercourse with foreign people.¹³

The Hasmoneans undoubtedly had trial courts, since it is recorded that they put to death those who had transgressed the laws and joined the Syrians.^{13a} In former times the trial courts were generally “people’s courts,” as portrayed in the Book of Susanna.¹⁴ But with the activity of the Hasmoneans the occasional people’s trial court developed into a permanent, inferior Bet Din. A little later, in the time of Simon ben Shattah,¹⁵ about 100 B.C.E., there already is conclusive proof of a regular trial court with definite rules of procedure.¹⁶

During the days of Judas and Jonathan the constant warfare gave no chance for establishing the Bet Din ha-Gadol. Only when

peace was attained and the government was reorganized in 141 B.C.E. under Simon did the judiciary system, including the various smaller courts, finally evolve.^{16a} The firm foundation of the lower courts, and at its apex, the Great Sanhedrin, could come only when chaos no longer prevailed. Hence when one is confronted with the question: "In what period between 160 B.C.E. and 60 B.C.E. did the Sanhedrin system originate?" — the answer is: with the inception of the Commonwealth under Simon the Hasmonean.

POLITICAL AND SOCIAL BACKGROUND

To understand better the nature of the Great Sanhedrin and the reasons for its rise at the time of the formation of the Commonwealth in 141 B.C.E., a review of the Commonwealth itself will be enlightening.

At a Great Assembly (*synagogue megale*) which convened on the 18th day of the month of Elul, 141 B.C.E.^{16b} (172 A.S.), in the third year of Simon, the independence of the Jewish nation was proclaimed, and resolutions conferring authority were drawn up.^{16c} The sovereignty of the common people was recognized and a democratic government introduced. By popular decree, the hereditary succession of the high priesthood in the family of Zadok was rescinded and the priesthood conferred upon Simon, in recognition of the valor of the Hasmoneans.¹⁷ The First Book of Maccabees describes Simon's assumption of power: ". . . Simon should be Prince and High Priest (*hegoumenon kai archierea*) for ever, until a true prophet should arise . . . he should be their general . . . it was his responsibility to take care of the sanctuary, that all should obey him, and that all contracts in the country should be written in his name. It was also decided that he should be clothed in purple and wear gold. The record went further in saying that it should not be possible for any of the people or of the priests to set any of these things at naught nor to countermand whatever he should order, nor to convoke an assembly in the country without his permission. . . . Whoever shall act contrary to these things or set any of them at naught shall be liable to punishment. All the people agreed to make it a law that they should do all of these

things for Simon. Simon accepted and consented to serve as High Priest, to be general (*strategos*) and governor (*ethnarchos*) of the Jews, and of the priests and to preside over all. They ordered that this decree be set upon brass tablets, that they place them in a conspicuous place in the precinct of the sanctuary, and that copies of them be placed among the archives, so that Simon and his sons might have them.”^{17a}

Though Simon was officially at the head of all affairs in the difficult years of the reorganization, he maintained a divisional policy of government administration. The priests were organized into a council, probably called *Bet Din shel kohanim*,^{17b} whose duty it was to supervise the purity of pedigree, answer questions concerning the priesthood and conduct the Temple services. They were officially stripped of all contact with political affairs of the state which, as we have noted, were now controlled by the democratic *Heber ha-Yehudim*.¹⁸ The *boule* of Jerusalem became the authorized administrative body over all Judea, and even the coins of Simon the Hasmonean bore the inscription “Jerusalem” after the fashion of the Hellenistic communes.¹⁹ Furthermore, the people took steps to insure the newly-founded comparative freedom. They did not want to permit a recurrence of the old aristocratic and domineering rule as was precipitated by the sons of Tobias or Menelaus and the Hellenistic priests who had brought about the trouble in Judea. Led by scribes, they had fought to throw off the Syrian yoke and maintain the purity of the Jewish law in the face of the Hellenists.²⁰ Consequently, a new class of teachers, rising out of the midst of the common people, called for a change, contending that they, rather than the hereditary priests, should be now recognized as teachers and judges in the new judiciary system of the government.

These changes, resulting from the Maccabean wars, indicated that the influence of the democratic element was not only in the administrative *Heber*, but also in the halakic *Bet Din*. Interestingly, at this time the first rabbinic teachers are specifically mentioned by name,²¹ unlike the earlier scholars who are unknown because they were absorbed anonymously into the ancient priestly gerousia.

In 141 B.C.E. such a new body probably was called only *Bet*

Din ha-Gadol.²² But the Hebraized term "sanhedrin" later became popular for the same body, and had a more specialized significance. Indeed, many Greek legal terms were Hebraized in that period of Jewish history. The Great Sanhedrin was now a kind of Areopagus for the Greek-speaking Jews who sought a synonym for Bet Din.

THE ESHKOLOT

Additional proof of the establishment of this distinct supreme, religious body of a judicial and interpretive nature during the reign of Simon the Hasmonean can be found in various rabbinic sources.

According to a talmudic tradition the Jewish authorities and the men of outstanding merit up to the time of Jose ben Joezer were regarded metaphorically as *Eshkolot*.²³ The meaning of this term is vague. Some interpreted it from the Hebrew as "grape clusters,"^{23a} signifying the versatility or mental productivity of the individual. Others saw in it the Greek expression for "scholiast."^{23b} The Amora Samuel seemed to sense a fuller meaning when he gave his midrashic explanation: **אִישׁ שָׁהַכְל בּוֹ** "a man in whom there is everything."²⁴

Whatever the pure etymological derivation might have been, the popular connotation was incorporated in the midrashic interpretation. Such a tendency occurs frequently in rabbinic literature where, though the particular derivative of a term is unknown, the general meaning, nevertheless, is well understood.²⁵

The tannaitic record of the Eshkolot, describing those who functioned till the days of Jose ben Joezer, referred to the official interpreters of the law prior to the creation of the Great Sanhedrin.^{25a} This conclusion can be advanced by quoting the same Amora Samuel: "All the Eshkolot who arose for Israel from the days of Moses to the days of Jose ben Joezer used to teach the Torah as even Moses, our master."²⁶ Probably these individuals were the teachers who centralized all duties within themselves and who, like Moses, possessed the reins of power. As is known, such men of dominance in the early Jewish state of the Second Temple era were the priests because, as political and spiritual leaders, they

also were the final judges and teachers of the law. Hence, the Eshkolot recorded in rabbinic tradition might be identified as the men in the gerousia where, in addition to the other combined functions, the priests were also the scholars and the interpreters of the law.²⁷ However, as a result of Pharisaic influence and the Hasmonean democratization of the government,²⁸ the high priest, by virtue of being the chief ruler of the state, no longer was the supreme judicature in Jewish law. It was vested now in the specially created institution of the state — the Bet Din ha-Gadol. Therefore the Mishnah stated: "In the days of Jose ben Joezer, the Eshkolot ceased."²⁹ In other words, the amalgam of authority — the gerousia — (symbolized significantly by the grape cluster) ended in the days of Jose ben Joezer.³⁰

RABBINIC EVIDENCE: THE FIRST HEADS

a. Jose ben Joezer.

Though the talmudic report of the cessation of the Eshkolot coincides with the historical events of the period, i.e., with the establishment of the Commonwealth, it is important to determine exactly the incumbencies of Jose ben Joezer and Jose ben Johanan. These are recognized by rabbinic tradition to be the first in line of the Zugot to serve in the Great Sanhedrin.

A. Geiger,³¹ relying on I Maccabees,³² believed that Jose ben Joezer probably was among the sixty Hasidim or company of scribes who were killed by Bacchides at the instigation of the high priest Alcimus. Alcimus, here identified with Jakim of Zeredot, was the son of Jose's sister. This view is based by Geiger on an account in Midrash Bereshit Rabbah³³ which relates that, being present when his uncle Jose was led to execution, Alcimus was threatened with tortures of retribution in hell for his faithlessness. The nephew (Jakim-Alcimus) was then seized with remorse and put an end to his own life.

If this hypothesis placing Jose ben Joezer's death at about 160 B.C.E., i.e., at the height of Judas Maccabeus' career, is correct, it would contradict the date proposed in this treatise — viz., 141 B.C.E. — when the Great Sanhedrin was created with Jose ben Joezer as its first head. How, therefore, can the traditions

regarding the Eshkolot be reconciled with the information on Jose ben Joezer as found in the Midrash and in I Maccabees?

A review of Geiger's two sources shows that their combination is arbitrary. Jose ben Joezer is not mentioned in I Maccabees; the text refers only to the sixty Hasidim. Moreover, the mishnaic report that Jose ben Joezer was "a *hasid* among the priests"⁸⁴ does not stamp him as a member of the sixty Hasidim. "Hasid" in the Mishnah simply meant that Jose was the most pious among the priests. It implies no connection with the Hasidim (Essenes).^{84a}

The legend in Bereshit Rabbah undoubtedly arose because of the term "Zeredot" found in the case of Jakim. Ultimately it was assumed that "Joezer ish Zeredot" was related to "Jakim of Zeredot."⁸⁵ Furthermore, the entire story in the Midrash lacks corroboration. The suggestion therein that Alcimus committed suicide is controverted by I Maccabees⁸⁶ which describes a different end: "In the 153 year A.S. (159 B.C.E.), Alcimus commanded that the wall of the inner court of the sanctuary be pulled down. He also pulled down the words of the prophets. And as he destroyed, Alcimus was stricken . . . and died with great torment." A study of the Midrash, moreover, shows that Jakim died before Jose, whereas according to I Maccabees, the Hasidim were killed about a year before Alcimus' death.⁸⁷ Therefore, these two sources — I Maccabees and Midrash Bereshit Rabbah — cannot be combined to prove one historic fact, as claimed by Geiger. They cannot be utilized as referring to the same persons or incidents, and therefore they do not establish that Jose ben Joezer died about 160 B.C.E.

Another talmudic legend sets the time of Jose ben Joezer in the era of Jannai, presumably Alexander Jannai,—ca. 103-76 B.C.E.⁸⁸ These haggadic statements confuse even more the evidence on the date of Jose's death. Was it as early as 160 B.C.E. or did he live as late as 76 B.C.E.? The latter date would be entirely out of line with other established facts. In 76 B.C.E., Simon ben Shattah and Judah ben Tabbai already were serving as the third pair in the line of Zugot. Hence the first pair should be placed about two generations earlier, i.e., in the second century B.C.E., about 140 B.C.E.⁸⁹

b. Simon the Hasmonean (The Just).

An actual record of the leadership of Jose ben Joezer can be found in Mishnah Abot 1. Here Jose ben Joezer is mentioned as succeeding Simon the Just. But it is most difficult to determine the exact identity and dates of the latter personality. It is related that "Simon the Just was of the remnants of the Keneset ha-Gedolah." Many scholars identified this Simon with Simon I (son of Onias I, grandson of Jonathan), the high priest who flourished about 280 B.C.E.⁴⁰ Others believe that he was Simon II (son of Onias II), the high priest, *ca.* 200 B.C.E.⁴¹

True, there were many Simons of note in different periods of Jewish history, and the title "Just" could have been employed for any one of them.⁴² Josephus uses it in reference to Simon I.^{42a} Even the talmudic sources give diverse identities. The story⁴³ of Simon the Just and Alexander the Great alluded either to Jaddua's meeting with Alexander the Great or the rapprochement of the high priest Simon II with King Antiochus III. But the Simon the Just mentioned in reference to Onias' Temple⁴⁴ might have been Simon II, because his successors are also mentioned in the text. The description of Simon the Just's Temple service⁴⁵ or the story of his relationship to the nazirites,⁴⁶ in which there are echoes of praise and exultation for the high priest, could have applied to any Simon. Thus these rabbinic sources may have corresponded with the description of Simon given in the work of Ben Sira. His eulogy of a contemporaneous Simon establishes beyond doubt the identity of Simon II. However, a record in the Talmud of the death of Simon the Just⁴⁷ may have dealt with any one of the personalities bearing the name.^{47a}

Though there is doubt in the above-mentioned rabbinic sources who was Simon the Just, the source in Abot I seems to be definite. I venture to say⁴⁸ that the particular term "Simon the Just"⁴⁹ in Mishnah Abot is more applicable to Simon the Hasmonean than to anyone else. The eulogy of Simon the Hasmonean in I Maccabees⁵⁰ entitled him to the honor—the Just—equally with any other Simon, and the description therein of his activity substantiates this:

"And the land had rest all the days of Simon; and he sought

the good of his nation; and his authority and glory pleased them well all his days . . . and they tilled their land in peace; and the land gave her increase, . . . old men sat in the streets, all spoke together of the common weal . . . until his glorious name was proclaimed to the end of the earth. He made peace in the land and Israel rejoiced with great joy. And each sat under his vine and his fig tree and there was none to make them afraid.”⁵¹

This picture shows to what eminence Simon the Hasmonean was raised by the people. Moreover, Simon laid great stress on law and order:^{51a} “He strengthened all those of his people that were brought low; he sought out the law and put away the lawless and the wicked.” This reflects the judicial activity of the period. Josephus⁵² also recorded that Simon the Hasmonean was one for whom the multitude had the greatest affection; and that an entirely new, peaceful and flourishing era began with his reign.

Simon was called the governor of the Jews^{52-1a} or the high priest and governor (*ethnarch*) of the nation.^{52-1b} Following Geiger’s suggestion^{52a} that the Greek expression “*o dikaios*”^{52b} or the Hebrew “ha-Zaddik” applied to a priestly personage,^{52c} to the ruler particularly or prince (*hegemon*)^{52d} of the people, it is felt that no one was more deserving of the dignity than Simon the Hasmonean who bears these titles.^{52e} So, too, in Mishnah Abot, the reference might be to the activity of Simon the Hasmonean who, because of his princely office, also was known as “ha-Zaddik.”

Remembering that history marks Simon the Hasmonean’s elevation as head of the Jewish people at a Great Assembly in 141 B.C.E., we should correlate this fact with the statement transmitted in Abot that “Shimon ha-Zaddik was one of the remnants of the Keneset ha-Gedolah.” S. Zeitlin⁵³ suggested that the reading in Abot was originally מרים (of the heads) instead of שמעון (of the remnants),^{53a} therewith noting that the phrase הצדיק היה מרים נסת הגדולה refers to Simon the Just as one of the leaders of the Great Assembly.⁵⁴ He believes that this Simon with his Great Assembly points particularly to Simon II. But this is scarcely acceptable. It should be recognized that in the case of Simon II (in the source recorded in Josephus) mention is made only of a gerousia and not of a Great Assembly. It would be

difficult, therefore, to identify the gerousia of Simon II in Josephus⁵⁵ with the Great Assembly of Simon the Just in Abot.

However, the Greek phrase *synagoge megale* in I Maccabees⁵⁶ corresponds literally with the Hebrew term **כָּנָסֶת גָּדוֹלָה** in Mishnah Abot. Likewise, Simon's title *Sar-am-el*, "Prince of the People of God (viz, Israel)" in I Maccabees^{56a} in its original Hebrew, **שֵׁר עַם אֱלֹהִים** or **רַבָּא בְּאַיְשָׂרָאֵל** in the Syriac version^{56b} suggests that the difficult reading in Abot was originally **מָשִׁירִי כָּנָסֶת הַגָּדוֹלָה**^{56c} "of the princes (dignitaries) of the Great Assembly." Moreover, tannaitic literature^{56d} in referring to the family of Mattathias utilized the biblical word **חַשְׁמָנִים**^{56e} —*presbeis*, princes, dignitaries^{56f}. This basically is a synonym for *hegemon*,^{56g} **שָׁרֵךְ**,^{56h} or **צָדִיק**⁵⁶ⁱ (*dikaios*) — the titles given to Simon in the different sources. Hence it may be inferred that Simon the Hasmonean, the *Sar-am-el*, the Prince in the *synagoge megale*, in I Maccabees, is the same **שְׁמֻעָן הַצָּדִיק הַיְהָ** in Mishnah Abot.⁵⁷

Rabbinic sources⁵⁸ usually mention Simon the Just together with Johanan the High Priest.⁵⁹ The latter was John Hyrcanus (135-104 B.C.E.), the son of Simon the Hasmonean (142-135 B.C.E.). Thus, we are told of Johanan the High Priest and Simon the Just, each hearing a voice while worshipping in the Holy of Holies.⁶⁰ Such a sequence also is found in another source noting that Simon the Just reigned forty years and Johanan eighty.⁶¹ Other references speak of Simon the Just and of Johanan sacrificing red heifers.⁶² This succession of names in various sources seems to show that the chronological sequence also had been accepted by tradition.⁶³ It indicates that the name "Simon the Just" was applied to the father of John Hyrcanus — i.e., to Simon the Hasmonean.

That Shimon ha-Zaddik in Abot denoted Simon the Hasmonean can also be substantiated by another tannaitic source:⁶⁴ **בְּמַתְנִיתָא תַּנָּא לֹא מְאֹסְתִּים וְלֹא גַּעֲלָתִים בִּימֵי יוֹנִים שְׁהַעֲמַדְתִּי לְהָם שְׁמֻעָן הַצָּדִיק הַשְׁמוֹנָאֵי וּבְנָיו וּמַתְתִּיחָו כָּהֵן גָּדוֹל**.

"In a baraita we studied: I have not despised them. . . . I have not expelled them, i.e., in the days of the Greeks when I set up for them Simon the Just, and the Hasmonean and his sons and Mattathias, the high priest."

The order of the talmudic passage is anomalous — viz., “the Hasmonean and his sons” precede “Mattathias,” the progenitor. Presumably, the father “Hasmonean” was the same person as Mattathias. Furthermore, the source seems indefinite because Mattathias was not a high priest. Nevertheless, the disparity in the texts of the various manuscripts⁶⁵ may be reconciled by reading simply:^{65a} שמעון הצדיק החסונה בֶן מַתִּיחוֹ כָהֵן גָדוֹל. Therewith, this passage, referring only to one person, records all of the titles of Simon. They show him to have been (1) the Just — צדיק; (2) of “Hasmonean” or princely dignity — חסונאי; (3) a direct son of Mattathias — בֶן מַתִּיחוֹ and (4) one upon whom had been conferred the high priesthood — כהן גָדוֹל.^{65b} His period was בימי יוונים “in the days of the Greeks.”⁶⁶

The text would then read: “In the days of the Greeks, when I set up for them [i.e., the Jews,] Simon the Just as Prince, the son of Mattathias as High Priest.” The Hebrew titles חסונאי and כהן גָדוֹל would then be exactly similar to the Greek as recorded for Simon in I Maccabees 14,41: “. . . the Jews and priests had agreed that Simon be their Prince (leader) and High Priest (*hegoumenon kai archierea*) for ever, until a true prophet should arise.”

Thus, if we accept the identification of Simon the Just of Mishnah Abot as Simon the Hasmonean, a sequence can be set for the date of the inception of the Great Sanhedrin. Moreover, Jose ben Joezer, the first head of the Sanhedrin, can be associated more definitely with Simon the Hasmonean, the head of the Great Assembly, for both are mentioned in Abot, Jose ben Joezer following immediately after Simon the Just.

The identification of Simon the Hasmonean with the origin of the Sanhedrin might also be recognized in the circumstances of this period and in the special laudatory expressions used to single him out from his brothers. It is known that throughout the wars the Hasmonean Bet Din served to guide the people. It may be assumed that Simon was then active as one of the guiding spirits of this tribunal. His brother, Judas Maccabeus, was primarily the warrior but Simon was the chief advisor. Accordingly, he may have headed the *Bet Din shel Hashmonaim*. In I Mac-

cabees, Simon is praised by his father, who reserved a more exalted eulogy for him than for his other sons, as "a man of wise counsel. . . . Give ear unto him for he shall be a father unto you."⁶⁷ So also Josephus records Mattathias' last testament: "Do you then esteem Simon as your father because he is a man of extraordinary prudence and be governed by him in what counsel he gives you."⁶⁸ Simon, therefore, was the man fitted for leadership and for judicial activity.

c. Antigonus of Soko.

In all probability, in the interval before the establishment of the Commonwealth, Simon had Antigonus of Soko as his colleague or assistant in the Bet Din of the Hasmoneans. Identification of Antigonus with this period can be deduced from the rabbinic tradition which associates the origin of intense Sadduceeism with the pupils of Antigonus,⁶⁹ and also from Josephus' record⁷⁰ of the three parties in ancient Judaism. Josephus, speaking of the activity of Jonathan (the Hasmonean) mentions the three sects, Pharisees, Sadducees and Essenes. The question arises: Why did Josephus include this passage, seemingly an irrelevant interpolation and having no connection with his narrative, at this point in his history? It might be inferred that Josephus meant to emphasize that the Pharisaic party, the democratic group opposed to the aristocratic Sadducees, had then become a strong enough factor to be reckoned with.⁷¹ But this was only a beginning. The real strife between the groups reached its peak later — in Alexander Jannai's day,^{72a} as shown by M. Friedlander.^{72a}

The first chronological testimony by Josephus of the three sects coincides with the well-known talmudic narrative concerning the origin of Sadduceeism with Antigonus' pupils. In other words, both the talmudic reference to the Sadduceeism of the pupils of Antigonus of Soko and Josephus' emphasis of Sadduceeism versus Pharisaism in the time of Jonathan coincide and establish Antigonus' existence at the time of the Hasmoneans. This parallelism of time is corroborated also in Abot where Antigonus follows Simon the Just and precedes Jose ben Joezer, thus fitting into the early Hasmonean decade.

Simon might have been the official "man of wise counsel," the one who "sought out the Law,"^{72b}—the head of the Bet Din—only in the very beginning, when his brothers were politically in control. Later, being exceedingly busy himself with state affairs, a new "man of wise counsel" had to be found in place of Simon. He was Antigonus. It is in this light that we can understand the rabbinic tradition which records that "Antigonus of Soko received (קִבְּל) from Simon the Just." *Ke-bel* means not only "receiving" but being fully "vested with authority."⁷³ In other words, Antigonus of Soko received from Simon his authority to "seek out the Law." He might have become an associate, assistant or successor to Simon,^{73a} both men acting jointly in the interpretation of the law in the Bet Din of the Hasmoneans in the days of Jonathan.

Such alliance of Simon and Antigonus is attested to by the reading in many manuscripts of Abot. Speaking of the first Zug (Jose ben Joezer and Jose ben Johanan) as receiving their tradition from their predecessors, the term קִבְּלוּ מֵהֶם, "they received from *them*" (in the plural), is used instead of מִמְּנָנוּ "from *him*." Ordinarily, the latter reading would be correct if the first pair (the two Joses) followed Antigonus only, and not both Simon and Antigonus.⁷⁴ The use of the plural points to the combined activity of Simon the Just and Antigonus of Soko.⁷⁵

One may wonder, why in the list of the Zugot recorded in Mishnah Hagigah this combined activity of Simon and Antigonus is not noted? When we recognize, however, that the term "Zugot" refers only to the heads of the fully constituted Bet Din ha-Gadol *after* the establishment of the Commonwealth, and that Mishnah Hagigah pertains only to the *Semikah* controversy in that particular body, it becomes apparent that Simon the Hasmonean and Antigonus do not belong to that category of disputants. They, as leaders, functioned only in the temporary Bet Din of the Hasmoneans,⁷⁶ that is, in the transition period *prior* to the creation of the regular supreme court, and not in the Bet Din ha-Gadol itself. Simon's power, according to the decree of the Great Assembly, did not extend to religious interpretation of the law.^{76a} He devoted all his efforts now to political or general problems, as

ruler of the state.⁷⁷ Antigonus, too, did not participate in the Semikah controversy and hence is omitted in the Mishnah Hagigah source. Mishnah Abot, however, concerned with the recording of the general chain of tradition from earliest times, does make note of the association of Simon and Antigonus.^{77a}

SIMON THE HASMONEAN AND THE ZUGOT⁷⁸

The opinion setting the origin of the Bet Din ha-Gadol in Simon the Hasmonean's day cannot be accepted as final until other views are examined. Zunz and Derenbourg⁷⁹ considered John Hyrcanus, the son of Simon the Hasmonean, as the one in whose reign the Great Sanhedrin was created, since he displayed an attachment for the law⁸⁰ and had more time than his predecessor for internal reforms. It was believed that the tradition pertaining to the various activities and measures for *demai* (the dubious-produce), which Johanan the High Priest (John Hyrcanus) introduced,⁸¹ supported such assignment of time. The talmudic assertion⁸² that Johanan the High Priest "appointed zugot" was especially used by these scholars for their views.⁸³ Nevertheless, this talmudic statement cannot be related to the origin of the Great Sanhedrin.⁸⁴ The term "zugot" as used here does not refer to heads of the Bet Din. Rather, in its simple definition of "pairs," it deals with the two overseers of the tithe collections who were appointed by Johanan the High Priest to execute his decrees of *demai*. It was an administrative position rather than an appointment to a judicial office.^{84a}

The notion of the creation of the Great Sanhedrin or the introduction of the judicial Zugot by John Hyrcanus is definitely not in accord with historical sequence. The third *Zug*, Simon ben Shattah and Judah ben Tabbai, functioned in Alexander Jannai's day (103-76 B.C.E.).⁸⁵ The second pair, evidently, was contemporaneous with John Hyrcanus (135-104 B.C.E.).^{85a} The major activity of the first *Zug* and the establishment of the Bet Din ha-Gadol could therefore have occurred only in the administration of Simon the Hasmonean, (142-135 B.C.E.), the father of John Hyrcanus and the grandfather of Alexander Jannai.⁸⁶

CHAPTER V

THE PRESIDENCY: ZUG OR HIGH PRIEST

RABBINIC TRADITION

According to rabbinic tradition presiding duumvirates, the Zugot, headed the judicial and religious legislative body in the first century of its existence. These were the spiritual successors to the men of the Great Assembly.

However, the identity of the Zugot should be more carefully examined in order to clarify their tradition. The Mishnah mentions a Nasi and an Ab Bet Din who served as dual leaders in the Bet Din.¹ This information has been categorically set aside by some scholars as unhistorical. They insisted that the title "Nasi" did not come into use until the close of the tannaitic period, and therefore the term did not represent a true picture of the practice of the Second Temple era.² Schürer,³ for example, contended that Rabbi Judah the Prince, compiler of the Mishnah, was the first rabbinical president to bear the title Nasi. Of the rabbis occupying positions in the Great Sanhedrin prior to Rabbi Judah there was not one who was known by the designation of Nasi.^{3a}

Contrary to this view is the fact that Hillel and his descendants already were called *Nesi'im* (princes, heads) of the Bet Din. When Hillel presented the tradition to the Bene Bathra "they immediately placed him at their head and designated him as Nasi."⁴ Likewise, in a story told of his humility, he was addressed as "Nasi b'yisrael."^{4a} His descendants who lived before 70 C.E. also are spoken of as *Nesi'im*. This is understood from the passage that "Hillel, Simon [his son], Gamaliel [his grandson] and Simon [his great-grandson] flourished as *Nesi'im* in the century before the destruction of the Temple."⁵

The above evidence proves that there were heads in the Great Sanhedrin of the Second Commonwealth bearing the title Nasi. This appellation, however, referred only to the Bet Din ha-Gadol

in session⁶ and designated the permanent president of the body who was selected from among the members. It was not an accepted cognomen or rank in the government *outside* of the meeting place of the Great Sanhedrin. It was not until the period of Rabbi Judah, the Patriarch, that "Nasi" became a state title with significance in the political domain.

HISTORICITY OF THE ZUGOT

The historicity of the Zugot has been questioned by scholars because passages where "Nasi" and "Ab Bet Din" occur⁷ point to such dual incumbency only in the schools of Jabneh and Usha. Nevertheless, we cannot accept the view⁸ that the reports in the Mishnah of the existence of a Nasi and Ab Bet Din at the head of the Great Sanhedrin are the "transference" or "retrospection" of the later organization of Jabneh into the earlier period of the Second Temple.

After the destruction of the Temple, the school of Jabneh was modeled after the halakic Bet Din. Many features of the old superior court might have been incorporated into the new. Despite difficulties there also was an attempt to retain the offices of Nasi and Ab Bet Din in memory of the earlier period of the Zugot.⁹

The first definite mention of an Ab Bet Din after 70 C.E. is found in the post-Hadrianic days of Rabban Simon ben Gamaliel II.¹⁰ Yet, many tannaitic sources point to the existence of both a Nasi and Ab Bet Din long before the destruction of the Temple. These sources contain such revealing incidents as: (1) the various controversies concerning Semikah between the individuals comprising the Zugot throughout the early generations;¹¹ (2) the three disputes between Hillel and Shammai;¹² (3) the argument of Simon ben Shattah and Judah ben Tabbai pertaining to the law of "alibi witness";¹³ (4) the joint action of Shemaiah and Abtalion in giving the "bitter waters" to a bondswoman¹⁴ and (5) the offer made by the rabbis to Akabiah ben Mahalalel to become an Ab Bet Din.^{14a}

It is on these grounds that the Tannaim record that there was a span of activity by leaders called "Zugot" in the century before the beginning of the Common Era, and that this period ended with

Hillel and Shammai.¹⁵ Thus the historicity of Zugot before 70 C.E. cannot be denied. It is needless to assume with Taubes¹⁶ that there were not "Five Pairs" but ten successive leaders who were intermittent Pharisaic and Sadducean presidents, or that the talmudic assertions concerning the Zugot were later interpolations. The history of the Great Sanhedrin points clearly to the Zugot functioning long before the advent of the Hillelite dynasty.^{16a}

EVIDENCE IN NON-RABBINIC SOURCES

Despite rabbinic tradition, many scholars¹⁷ maintained from their study of the non-rabbinic sources that the high priest or the king was the head of the Great Sanhedrin. Supporting their contention that the Great Sanhedrin was an all-inclusive body, they quoted Josephus' records in *Antiquities* 20.10.1 and *Against Apion* II, 23 (193) on the position of the high priest.¹⁸ However, a careful reading of these sources shows that Josephus pictured only his ideal of the theocracy, at the head of which was the high priest. So also we may regard as theoretical his assertion in *Antiquities* 4.8.14 that "all undetermined cases are to be sent to the Holy City where the high priest, prophet and gerousia are to determine them." Josephus based his report on Deuteronomy 17.8.¹⁹ But no historical conclusion as to the presidency of the Great Sanhedrin can be drawn from these sources.

In the same way, the passage in I Maccabees 14.44,²⁰ speaking of Simon the Hasmonean's powers, does not affirm his place in a Great Sanhedrin. It simply proves that Simon was installed as head of the Jewish state and, as such, had full authority. It was not possible for the people and priests to countermand whatever he should order. The fact that no assembly could be convoked without his permission does not imply that he held the presidency of the Great Sanhedrin.

The different trials²¹ recorded in Josephus and in the Gospels and Acts also do not offer proof of the presidency of the high priest or a king in the Bet Din ha-Gadol. These trials were held in inferior trial courts and therefore had no bearing on the Great Sanhedrin, which was only an interpretive or legislative body and judged only religious acts.^{21a}

However, it is important to examine those cases of persons who are mentioned in rabbinic tradition as *Nesi'im* and who appear only as ordinary members in the descriptions of Josephus and the Gospels.

1. The first case is that of Sameas in the trial of Herod. Josephus²² speaks of Sameas as an ordinary man, whereas the Talmud pictures Shemaiah (identified by some scholars as Sameas)^{22a} as the head of the Great Sanhedrin. If we recognize that the trial of Herod took place in an established court in 47 B.C.E., there is no contradiction. Sameas participated as a regular member in the court trying Herod,^{22b} but later was elevated to the position of head of the Bet Din ha-Gadol.

2. In the case of Gamaliel who stood up in the council at the trial of Peter^{22c} and the Apostles, warning them against any rash act, it could be seen that it was only after the court was "assembled" that Rabban Gamaliel (the elder) was invited to it. It was not a regular court. Hence this source does not contradict the possibility that Rabban Gamaliel was then the *Nasi* in the Great Sanhedrin as recorded in the Talmud.

3. The sources in Josephus' *Life* 38.39, speaking of Simon ben Gamaliel I, record him as an official in the provisional government. Josephus speaks of him there only as a learned Pharisee, active in political affairs. He was concerned with Simon's activity *outside* of the halakic body and therefore did not indicate the presidency that the sage held.

It is fair to assume that at this time (about 66 C.E.) when the Great Sanhedrin had been dissolved, Simon ben Gamaliel I became one of the heads of the newly set-up provisional, coalition government. Josephus characterizes him as "a man of great wisdom and reason and capable of restoring public affairs by his prudence when they were in an ill posture." Previously, Rabban Simon ben Gamaliel had been the *Nasi* of the Bet Din ha-Gadol.

Josephus points out the political events of this crucial period. The best coalition in a new government would be that of Sadducees represented by the high priest, Anan, and of Pharisees represented by the former *Nasi*, Rabban Simon ben Gamaliel I. Thus did the Jews aim to succeed in the revolt against Rome. This

state of affairs can be seen from *Life* 12, where Josephus writes that he sent a letter to this "synedrion" (the provisional government in Jerusalem) informing them of the conditions at Galilee.

THE HIGH PRIEST AS NASI

Though the usual sources do not mark the high priest as the Nasi of the Great Sanhedrin, a particular passage in the Mishnah seems to do so. The mishnaic statement in Horayot²³ deals with transgressions of the commandments of the law by individuals, the high priest, the Nasi, or by a majority of the people who had been led to sin by a faulty decision of the court. Describing the ruler, the Mishnah declares: "And who is the Nasi?²⁴ This is the king, for it is written, 'And doeth any one of all the things which the Lord his God had commanded (not to be done)' — a Ruler (Nasi) that has above him none save the Lord his God."

On the basis of this source Schürer maintains that "unter Nasi ist überall der wirkliche Fürst des Volkes, speziell der König zu verstehen."²⁵ However, a careful examination of the passage does not sustain him. The mishnaic declaration is only theoretical and based on Leviticus 4.1-21; the explanation of Nasi is only an academic elaboration of Leviticus 4.22.^{25a} Furthermore, the discussion in the Mishnah belongs to the time of Rabbis Akiba, Jose ha-Galilee and Simon ben Johai. At that stage of history, if the term "Nasi" had been used for contemporaries, it would have applied to the head of the rabbinical school in Usha, i.e., the Nasi, Rabban Simon ben Gamaliel II, and not to a "king." No kingdom existed then. Therefore the term "Nasi" could not be regarded as referring to an actual monarch.^{25b}

Secondly, it is known that during the Second Commonwealth no priest was "anointed" with oil.¹⁶ Hence such a priest mentioned by the side of the Nasi in the same section of the Mishnah, is an anachronism.

The only conclusion that may be reached with reference to the term "Nasi" is that it probably applies in a general sense to many kinds of rulers.^{26a} It may refer to the king or to the high priest, as it does in Leviticus or Ezekiel²⁷ upon which the Tannaim in Mishnah Horayot based their discussions. Or it may even

denote in an academic manner a "prince of all Israel" or "a head of a tribe." Thus, the question is raised in the Tosefta: "What is meant by a Nasi? A Nasi of all Israel and not a Nasi of tribes."²⁸ It is known that after the Restoration (536 B.C.E.) there were no "tribes" in Israel and therefore all discussion thereon is only academic.

The proof which is gleaned from another Mishnah²⁹ that Nasi meant the king and that the Ab Bet Din was second to the king also cannot be accepted. The correct reading,³⁰ contrary to I. Jelski,³¹ is: "The Urim and Thummim were not utilized for a common person but only for the king, for the Bet Din and for one whom the congregation had need." Since "Ab Bet Din" is not used in this passage, it cannot be said that "king" mentioned in the beginning of the phrase referred to the Nasi. Besides, there were no Urim and Thummim in the Second Commonwealth. Thus, in the post-Exilic period reference is made to the eventuality: "till there rise up a priest with Urim and Thummim. . . ."^{31a} Josephus remarks: "These ceased to shine two hundred years before I composed this work,"^{31b} i.e., about the time of John Hyrcanus' death;^{31c} but this is an exaggeration. The Mishnah notes that these ceased at the death of the first prophets.^{31d} Hence the particular mishnaic statement associating the Urim and Thummim with Bet Din has no historic value for our study.³²

On the other hand, the mishnaic declaration, giving the names of the Zugot who comprised the rabbinical leadership in the Bet Din and pointing out that the first of each pair was the Nasi, and the second, the Ab Bet Din,³³ is conclusive proof that the term "Nasi," as it was generally understood in talmudic references, did not refer to a king. Proof of the rabbinic leadership can also be found in the assertion that Hillel, Simon, Gamaliel and Simon were *Nesi'im*, heads of the Great Sanhedrin during the century before the destruction of the Temple.³⁴

The mere fact that the phrase "they appointed him Nasi over them" already was used in the ancient story of Hillel's elevation by the Bene Bathra³⁵ proves that the position of Nasi was an early institution. Hence all passages which record the Zugot of the Second Temple era are authentic sources of the epoch's history.

CHAPTER VI

RIVAL SCHOOLS

These problems still remain: (1) Who was the Nasi and who was the Ab Bet Din? (2) What need was there for two heads in the Great Sanhedrin, serving jointly as the Zugot?¹ To answer these questions the circumstances surrounding the emergence of the Sanhedrin should be re-examined.

HISTORIC EVENTS AND THEIR EFFECT

It has been ascertained that the Commonwealth established in 141 B.C.E. was in the nature of a popular government. The common people and the scribes were gaining a political voice that had heretofore been the prerogative of the priesthood. This democratic impulse also was felt in the new halakic body created to interpret the law.

Especially marked were the differences between the Pharisees and Sadducees. Though the origin of these sects may be traced to the days of Ezra, their differences crystallized in the period of Jonathan the Hasmonean and Antigonus of Soko. A few years later, in Simon's regime, both Pharisees and Sadducees began to take active part in the reconstruction of the new government of the Hasmoneans and their perspectives clashed.^{1a} Though the Pharisees gained power, the ancient theocratic traditions could not be easily erased. The priests, as hereditary officials, teachers and judges of the law, still retained their superiority, and their decline in prestige came slowly. The majority of the Sadducees belonged to the priesthood and constituted the old aristocracy. The Pharisees were, in the main, of the common people who had gained in prestige by the Maccabean Revolt and its democratic trend. In time these social distinctions influenced the philosophies of life of both groups and their attitudes toward the law. The aristocratic Sadducees generally were conservative; the democratic Pharisees were liberal and progressive.^{1b}

These two schools of thought — Sadducean conservatism and Pharisaic liberalism — now were represented in the new Great Sanhedrin which served as the religious-legislative court of the Jewish people. Hence the existence of rival schools of thought is the explanation for the Zugot (Pairs) heading the Bet Din ha-Gadol. One was the leader of the conservative division — the right wing, and the other was the progressive leader — the head of the left wing. They were the "strict constructionists" and the "loose constructionists." The Sadducees sought to maintain the priestly *status quo* in Jewish practice; the Pharisees sought to democratize the institution and admit the laity.

Though the popular wave brought a democratic element into the government, there can be no doubt that when the Sanhedrin was established the aristocracy still had the upper hand. It is inconceivable that the aristocratic priests who for so many generations had governed and had been the teachers of the law in the gerousia should have relinquished the heritage delineated in the Bible. Even the laity recognized this superiority. A conservative opinion in regard to ancient traditions also might have prevailed at this time in order to combat the evils of the pre-Maccabean period. It is true that many of the priestly class formerly had sought Greek culture and gradually had been weaned away from the Torah heritage. But now, under Hasmonean rule, there still were priests and sages who were attached to the biblical law and had fear of innovations, especially after they had seen the effect of the Hellenistic influence in Judaism. For this reason, too, conservatism dominated in the law.

A description of Sadduceeism and its aristocratic-conservative outlook is given by Josephus; but he refers to a later period of the Commonwealth.^{1c} In early Hasmonean days the party might not have shown such a marked taint as ascribed to later Sadduceeism.^{1d} Furthermore, the Hasmonean family, which led the fight against the Hellenistic aristocrats, aligned itself with the upper classes after peace had been secured in the government and its power increased.^{1e} The members of the family hoped thus to strengthen the pillars of the government.

Hence, with the formation of the new government this aristo-

cratic-Sadducean or Zadokite element, with its tradition as teachers and judges of the law through its priestly heritage, still dominated religiously. No doubt, unhampered by the Hasmoneans, it gained the majority voice in the new halakic organization. Therefore it is conceivable that an aristocratic priest inclined toward the Sadducean-conservative opinion might have been chosen as the first Nasi of the new Great Sanhedrin. He was the leader of the majority in the Court while the Pharisees, having won recognition of their right to participate in the interpretation of the law, were represented by the Ab Bet Din, who served as Minority Leader.

This view, explaining the Zugot as leaders of rival schools of thought, should not be regarded as applying merely to two opposing groups of one party,² i.e., the conservatives and the liberals within the Pharisaic class itself. L. Finkelstein asserts: "To emphasize the equality of the two groups within Pharisaism a system of dual leadership was arranged, giving each equal representation."³ If this were true, one would regard the Bet Din ha-Gadol as always having been strictly a Pharisaic court. Though there are scholars who entertain this view, it does not fit into the picture of the early days of the Great Sanhedrin. It is applicable only to the later era, i.e., after Simon Ben Shattah.^{3a} At the time of the Hasmonean successes, the priestly aristocratic families still exerted a commanding influence, and therefore could not be denied a place in the new government. It is hard to believe that Simon the Hasmonean excluded the Sadducees from participation in the different phases of the democratic government or that he restricted them only to the Temple service. The manifesto in I Maccabees mentions again and again "priests and people,"^{3b} signifying that both classes participated in the new government. It is unthinkable that membership in the religious, legislative court consisted only of Pharisees (representatives of the people) and participation in it was denied the Sadducees (the priests). The Hasmonean victory gave the common people a voice, but not too much of it at once. They attained the zenith of power only by a gradual development, and even then some Sadducean or ultra-conservative elements still remained in the Sanhedrin.

The fact that there always were two factions—liberals and conservatives—in the Great Sanhedrin⁴ does not mean to imply that if “the first sage (later called Nasi, president) was a patrician, the second or associate sage (later called Ab Bet Din, head of the court) was a plebeian and vice versa.”⁵ Rather, it is believed that social status was of secondary concern in choosing the Nasi and Ab Bet Din. The important factor always was that the Nasi served as head of the majority group and the Ab Bet Din led the minority wing.^{5a} In the early days of the Sanhedrin this situation was apparent in the heterogeneity of the Sadducees and Pharisees.^{5b} Only later, when the constitution of the Sanhedrin was mainly Pharisaic, the differences in outlook were evident in the struggle between the liberals and conservatives within the party itself. In short, the basis of conflict in the Great Sanhedrin throughout was “strict-constructionism” in law *versus* “loose-constructionism.”

The Nasi’s position was determined by the power of the party. At first, the Nasi was conservative because the majority of the court was such. Later on, in the days of Simon ben Shattah^{5c} when the liberals dominated, the Nasi was chosen from their ranks. During the span of the Hillelite dynasty, on the other hand, there was no Ab Bet Din.⁶ At that time the liberal, progressive view of the Hillelite House fully dominated, whereas the strict constructionists carried on in the Shammaite school—there being only an impotent minority of the latter in the Great Sanhedrin. The fact that the Sadducees had to follow the Pharisees^{6a} in the interpretation of law also shows the latter’s dominance in the Great Sanhedrin during the last decades of the epoch of the Second Temple.

MAJORITY AND MINORITY LEADERSHIP

The existence of majority and minority voices in the Great Sanhedrin can also be determined from the fact that in the very early Halakot of that period only the laws recorded in the names of the Nesi’im were transmitted for posterity. The testimony of an individual Nasi, such as Jose ben Joezer or Joshua ben Perahiah, given under his own name as noted in Mishnah Eduyot, should not be regarded as private opinion. Rather, it represented the law passed by the majority wing headed by the Nasi. The name of the

individual Nasi stood for his whole party and in no way did it shut out the party's principles and tenets as being different from his own.

On the other hand, no laws were cited in that early period in the name of the Ab Bet Din, such as Jose ben Johanan or Nittai of Arbela. Theirs was the minority opinion which was not accepted and hence not preserved for future generations. Later tradition,^{6b} however, included the record of minority views into halakic history because Judaism became entirely Pharisaic. When such doctrines were recorded, the Great Sanhedrin no longer existed; the Academies of the second century, with free debate and untrammeled conviction, were then bearers of tradition.^{6c}

An examination of the early Nesi'im and their statements establishes clearly that there existed a Sadducean conservative influence. Jose ben Joezer, Joshua ben Perahiah and Judah ben Tabbai, the first three Nesi'im, were known to have been conservative because they followed the principles of "non-reliance" upon innovations in the law. They had no faith in new interpretations by the sages, as apparent from the tradition of the Semikah controversy:⁷ "In the early days there was no conflict but in Semikah. There were five Zugot: three of the Zugot who said (לשםך לא) 'non-reliance' were Nesi'im; two of them who said (לשםו) 'reliance' were Abot Bet Din."⁸

S. Zeitlin⁹ has already shown that this Semikah controversy—the bone of contention during the Zugot administration—had to do with reliance upon the authority of the sages who introduced new laws. Hence the basic conflict¹⁰ in the early Great Sanhedrin was conservatism (opposition to the introduction of new laws and innovations by the sages) versus liberalism (reliance upon the authority of the *Hakamim* [wise men] in addition to that of the Torah), i.e., "strict constructionism" *versus* "flexible constructionism" in the interpretation of the law.

NESI'IM VERSUS ABOT BET DIN

Jose ben Joezer, the first Nasi, was a priest.¹¹ Probably the same may be said of the second Nasi. The Midrash¹² relates that Joshua ben Perahiah burned a red heifer; this occurred in the period of

John Hyrcanus.¹³ Since the ceremony of burning a red heifer was not performed by the high priest himself but by another priest^{13a} under the direction of the Great Sanhedrin,¹⁴ the probability is that the honor was conferred by the high priest, John Hyrcanus, upon Joshua ben Perahiah. This association leads one to believe that the second Nasi also was of priestly lineage.

Since these first two priestly Nesi'im maintained the conservative opinion of "non-reliance" on innovation in law, the doctrine upheld by the Sadducees, it could be postulated that they, as the first two majority leaders in the Sanhedrin, were Sadducean conservatives.^{14a} Was this the case also in the later Sanhedrin? The answer can be obtained only by examining the historical data on the vicissitudes of leadership in that body.

In the days of Simon ben Shattah¹⁵ the Pharisees gained the upper hand in the government. It is assumed that that was the time when the Great Sanhedrin changed its composition and became predominantly Pharisaic, following the liberal constructionists in the interpretation of the Torah.¹⁶ Consequently the Nasi, in that and succeeding periods, was of the Pharisaic or new majority party. This could be further determined from a tradition^{16a} that in the reign of Alexandra, her brother, Simon ben Shattah, was established in full control. He drove out the Sadducees and led the liberal Pharisees to majority rule and power in the court.

"Non-reliance" on innovation in law or strict constructionism of the Torah was advocated now by the Abot Bet Din and not by the Nesi'im, as previously. Thus Abtalion and then Shammai served in their respective generations as the leaders of the conservative, minority wing. On the other hand, the progressive proclivity of "reliance," formerly held by the Abot Bet Din, now was supported by the two later Nesi'im, Shemaiah and Hillel.^{16b} These leaders of liberal thought and of the majority wing were now the advocates of non-rigid construction in the interpretation of the law. Shemaiah's liberalism might be seen in his interpretation of a biblical passage making the instigator of a crime equally guilty with the perpetrator.^{16c} Hillel's liberalism is well known. As Nesi'im, they are mentioned before their conservative Abot Bet Din in the text of Mishnah Hagigah.¹⁷

A baraita¹⁸ further attests to the existence of these different schools of thought in the early Sanhedrin: "The Eshkolot from the death of Moses to the days of Jose ben Joezer and Jose ben Johanan had no blemish. Henceforth, there existed a blemish." What constituted such an imperfection?

The declaration that the teaching of the Zugot possessed a "blemish" can be best explained by the parallel tradition of the presence of conflicting opinions in the halakic Bet Din, represented by Sadducees and Pharisees. On the other hand, until the era of Jose ben Joezer, the Eshkolot decided the law according to the high priest's dictate and, therefore, there was no discord. These Eshkolot, we have seen, can be identified with the all-powerful gerousia of the early period. However, with the establishment of the superior court and the rise of the democratic impulse, there was no single voice. All matters had to be decided according to the majority, though the minority voices were seeping through. Thus the formation of the Great Sanhedrin brought with it a conflict of halakic opinion. It was this contest in interpretation or construction of the Torah by letter or by spirit which might have been regarded as a blemish in the eyes of the later rabbis.

HOW THE TITLES WERE USED^{18a}

The Nasi has been depicted as the leader of the Right Wing or majority opinion of the Great Sanhedrin; the Ab Bet Din as the head of the Left Wing or the minority voice. Why were these particular titles used? And how did they originate? W. Bacher¹⁹ held that the title "Nasi" might have gone back to the time when the high priest was the prince and ruler of the state as described in Ezekiel,^{19a} and the appellation was carried into the Second Commonwealth institution. In an indirect method, Lauterbach²⁰ suggested that since the biblical term *Edah* was used with reference to "judgment," there was the probability that the highest court or Sanhedrin also was the *Edah*.^{20a} Hence the title "Nasi" indicated the fact that the head of the Sanhedrin was primarily the religious leader of the community.

Whatever the reason, it should not be assumed that the term was applied only to the head of the state, that sentiment in Jewish

life prompted its adoption, or that a midrashic interpretation²¹ influenced its use. An examination of the cognomen "Nasi" proves that the term was not distinctly technical and could not have been limited to only one kind of office. The head of any institution or body might have been called "Nasi." Even the high priest, the king and the head of any council might have been "Nasi" in his particular domain.^{21a}

"Nasi," as used in the case of the halakic Sanhedrin, applied to anyone chosen by and from the members of the court to preside over its sessions.²² It was taken for granted that the majority leader was the presiding officer. If we recognize the fact that with the Commonwealth there also was created a system of appeal from lower to higher courts, it is plausible that the head of the highest court was not regarded as a mere Ab Bet Din. That title (Father of the Court) could be applied to the presiding judge of any court. The Nasi, however, had more prestige, dignity and power. It may be accepted that by virtue of his supremacy in the interpretation of the law, the majority leader was honored with the title Nasi, the Ruler, or Chief Justice of the entire judicial system, and he was so regarded by his colleagues.²³

The second leader in the Sanhedrin was crowned with the rank of Ab Bet Din, maintaining his dignity as head of the minority opposition. It may be supposed that when the majority leader, or Nasi, was absent from court sessions, the Ab Bet Din was accorded the honor of serving as the presiding officer. The Ab Bet Din probably then directed the debate and supervised the actual business of the court, pointing to a significant feature in the meaning of the title. A reference to Shammai's aspirations to dominate in the enactment of a particular Halakah seems to substantiate this view.^{23a}

HISTORIC CONTINUITY

It is rather extraordinary that the title "Ab Bet Din" is not found after the period of the Zugot, i.e., when Simon, the son of Hillel, assumed office.^{23b} There is a likelihood that there was no Ab Bet Din at that time. The Great Sanhedrin was controlled only by the Hillelite dynasty; minority opinions did not prevail

then in the Bet Din proper. In public practice even the Shammaite view had to succumb to the Hillelite. The conflicts were now academic and continued only in the respective schools established by the Shammaites and Hillelites to spread their own tenets. In time these rabbinic schools overshadowed the academic prestige of the Great Sanhedrin, for their activity continued even after 70 C.E.^{23b1}.

The School of Shammai followed the conservative thought and on most occasions its opinion is mentioned first; for, in the methodology of the Talmud, it is the practice to mention the conservative tendency or older tradition first and then the liberal view or innovation in law.^{23c} Nonetheless, the binding decisions and practices for the age were promulgated only from the Great Sanhedrin which the Hillelites controlled until the destruction of the Temple in 70 C.E. Hence it is definite that during that century—the days of Simon, Gamaliel and Simon, the descendants of Hillel—there were no Zugot.²⁴ The appellation “Rabban” which appears first in the Hillelite dynasty emphasizes the full recognition of the Nasi, alone, without an Ab Bet Din or minority voice.^{24a}

An attempt was made to reestablish the dignity of the Zugot after 70 C.E.^{24b} Yet, unlike the status in the Second Temple era, the system of majority and minority wings no longer prevailed.²⁵ Individual opinion became equal to party power. This explains the recording henceforth in rabbinic dicta of personal, conflicting views of individuals.

Before 70 C.E., when anyone desired information on the observance of the manifold commandments of the Torah, or sought any record of tradition, religious conduct, or common law, the answer came from the Gazit Chamber which was the source and fountainhead of all Jewish teaching, “whence the Law went forth to all Israel.”²⁶ This Bet Din ha-Gadol, with its majority and minority representatives, was the only interpreter of the Halakah, of Jewish tradition and practice, for the Jews of the era of the Second Commonwealth.

CHAPTER VII

THE MEMBERSHIP

REQUISITES

Since the Great Sanhedrin functioned as an halakic body to interpret the law, the first requisite for membership naturally was erudition and knowledge of Jewish tradition. That it was composed of scribes, as the Talmud described it, is therefore irrefutable. The term *soferim* (*grammateis*) as applied to the individual members in the Sanhedrin shows the stress on scholarship. These teachers of the Law (Book) could be priests or laymen, elders, or of the common people.¹ The mere fact that some government officials came from priestly families or from the aristocracy did not make them *per se* eligible for the Great Sanhedrin. They had to be learned men first. In all probability, only the priests were the aristocrats of learning during the early period of the Second Commonwealth.² But with the democratic influence, resulting from the Maccabean victory, laymen secured places in the new Sanhedrin. This situation prevailed especially in the days of Simon ben Shattah and thereafter when the "loose constructionists" or liberals gained supremacy.³

In addition to learning, other traits for members are recorded in rabbinic literature. While some requirements might seem today to be academic, they should be regarded as ideals set up to raise the standard of its membership.⁴ The Sanhedrin hoped to draw its quality from a well of justice, mercy, and wisdom. Verdicts should be meted out through a coordination of head and heart.^{4a}

The Amoraim later recorded additional essentials such as height, appearance, age, knowledge of witchcraft and of the "seventy tongues."⁵ However, these attributes were only generalities introduced among the prerequisites in order to raise the dignity of the Great Sanhedrin of the Second Commonwealth.⁶ They were

mainly for purposes of record to stress the high level that that body had reached. In practice, unless cases of nepotism were involved, only men best suited were chosen for membership. As in the course of all human events, there was a possibility of an unworthy individual securing office, and the Sanhedrin was no exception to the rule.^{6a} It is interesting that Philo also discussed the ideal qualifications of judges, based perhaps on the best views of Jewish and Greek traditions.^{6b} Whether the ideal was factual and led to practice is conjectural.

PLACE OF THE KING OR HIGH PRIEST

According to rabbinic tradition, a high priest,⁷ but not a king⁸ could hold a place in the Great Sanhedrin. The difference may be seen in historic perspective. Many questions of ritual and Temple service required legislative direction and the priests, with their hereditary power as interpreters of the law, had their commission handed down in the Bible.^{8a} Therefore the high priest was traditionally a teacher of the law and expounder of ritual practice and consequently a person of authority in the Sanhedrin. On the other hand, civil rights in the Second Temple era were granted by the Persian or Greek rulers. Thus Ezra was appointed by the king to try those who had transgressed the law of the state.^{8b} When the halakic Great Sanhedrin was organized, it continued in part the theocratic work of the gerousia of which the priests were once the heads. Hence no question arose of the high priest's place in it. But the king himself, i.e., the civil domain, had no place in the religious body.⁹

MANNER OF SELECTION

The Mishnah Sanhedrin gives a graphic description of the manner in which the members were chosen:

"Before them (i.e., the judges) sat three rows of disciples of the Sages and each knew his proper place. If they needed to appoint another as judge, they appointed him from the first row. One from the second row came into the first, and one from the third row came into the second and they chose yet another from the congregation and set him in the third row."

He did not sit in the place of the former but he sat in the place that was proper for him.”¹⁰

The choice therefore seemed to have been based on the merit system.

There is no actual record of such a promotion in the Second Temple era. Nevertheless, it should be noted that this was the procedure for elevating Rabbi Eleazar ben Azariah¹¹ in Jabneh. It may be assumed that this method originally was used in the Great Sanhedrin and then followed in later periods in the Palestinian academies of the Patriarchate.

Interestingly, another description of the mode of selection is found in Tosefta Hagigah and Shekalim:

“From thence they sent and investigated. Whoever was wise and humble and modest and fearful of sin and well respected by his fellows at first was made a judge in his own city. From there he was elevated to the Temple Mount. From there to the Hil Court and from there he was raised to the Gazit Court.”¹²

These two sources seem to complement one another.¹³ The last row of the Great Sanhedrin consisted of those who had been promoted from the Hil Court.¹⁴ This manner of choosing was in accordance with the powers of the supreme court—with a plan to regulate lower courts and thus supervise the entire system of law.¹⁵ In all probability, initial appointment was the prerogative of the Nasi, the members only confirming or rejecting.¹⁶

INDUCTION

Semikah was the authorization permitting the recipient to participate in the discussions of the body.^{16a} For formal induction of the members there may have been a ceremonious laying on of the hands.^{16b} Granted Semikah, one was admitted officially and considered ordained to serve as a judge.¹⁷

The importance of Semikah may be seen in the efforts made by Rabbi Judah ben Baba in the Hadrianic period to combat the Roman law forbidding ordination. This sage, and many others, recognized the importance of keeping Semikah alive to symbolize

the traditional heritage and continuity of the law as expounded by the ancient Bet Din ha-Gadol.¹⁸

SEATING ARRANGEMENT

The Mishnah depicts the seating order in detail:^{18a}

"The Sanhedrin was arranged like the half of a round threshing floor so that all might see one another. The president sat in the middle and the elders to his right and left. Before them stood two scribes¹⁹ of the judges, one to the right and one to the left and they wrote down the words of them that favored acquittal and the words of them that favored conviction. Before them sat three rows. . . . He (the new appointee) did not sit in the place of the former (who had vacated his seat) but in the place that was proper for him."²⁰

This description often is referred to as the situation prevalent in the Academy at Jabneh.²¹ Nevertheless it is logical to accept this arrangement also for the early Sanhedrin system of trials. The tone of the passage is not academic but historic.^{21a} Moreover, the seating plan was not limited to trial court procedure or only to capital cases. It could have applied both to the system in a court of Halakah — the Great Sanhedrin — and to the situation in the second century academies where disciples participated in the discussions and interpretation of the law.

JUDICIAL HONOR AND TENURE

When the judges entered the court room, the people rose to their feet. The actual record²² of such honor dates from post-Hadrianic days, but might also apply to the earlier Bet Din which was the original model of the later tribunals.

It is needless to emphasize the respect with which the judges inspired the people. They were men of dignity, learning and integrity, supposedly unapproachable to attempts at bribery since their salaries came from Temple funds.^{22a} Interestingly, Philo's²³ enumeration of such requisites for judgeship parallels rabbinic tradition and ideals.²⁴

The positions may have been for life. The cases of the Bene Bathrya,^{24a} of Menahem who preceded Shammai,^{24b} and of Judah

ben Tabbai²⁵ present instances of voluntary withdrawal from office.

ARISTOCRATIC NATURE OF THE BODY

Those eligible for the Sanhedrin had to be descended from pure stock.²⁶ In tracing the heritage of any family one did not have to search beyond the Great Sanhedrin, for membership therein precluded any taint in paternity. The Mishnah records that those qualified to act as judges in the trial of capital cases were "Priests, Levites, and Israelites who could give their daughters in marriage into the priestly line."²⁷ Probably the exclusion of bastards and proselytes was meant.²⁸ Two families of irreproachable lineage who were found suitable to give their daughters in marriage to the priestly class are mentioned as examples.²⁹

This delineation of nobility was natural in a group pattern existing in Jewish society at that time.³⁰ As we have already seen,^{30a} the first teachers probably were exclusively of priestly pedigree.³¹ It is definitely known that Jose ben Joezer was a priest, for he was called the "pious among priests." Legend also hinted at the priesthood of Joshua ben Perahiah; and circumstances point to the assumption that Simon ben Shattah was of the gentility and perhaps a priest, because he was a brother of Queen Salome Alexandra who married a Hasmonean.^{31a}

However, the strong democratic influence on the Great Sanhedrin after Simon ben Shattah apparently prompted the eligibility of members not of the priesthood. This view can be substantiated by a story told of the people honoring Shemaiah and Abtalion because they were members of the Sanhedrin. The phrase "bene amanim,"³² used for these religious leaders in the context, depicts them as being not of the rank of priests but "of the common people;" and a baraita even regards them as proselytes, descendants of Sennacherib. Nevertheless, it is interesting to note that later attempts were made to trace for Hillel a pedigree, back to King David, thereby emphasizing the princely genealogy of the patriarchate.³³

The basis for a body of early aristocracy, "Levites, priests and heads of families in Israel," is found in biblical records.³⁴ It was

practiced in the gerousia, and adopted subsequently in the Sanhedrin. Tradition later stressed that a court might have priests and Levites, but that absence of their caste was no longer a hindrance.³⁵

The exercise of the law was the privilege of all, even in ancient times; but the priests of the Levite family, because of their spiritual rights, were the governors as well as the teachers. Presumably one who served in the Temple was best qualified to be the custodian of the law and the guardian in the government.³⁶

PHARISAIC AND SADDUCEAN COMPOSITION

It is assumed that in the beginning the Great Sanhedrin was composed of scholars who were priests, Levites or Israelites of aristocratic ancestry. This might explain the Sadducean priestly dominance in the early days of the court. With the advent of the democratic spirit and especially with Simon ben Shattah's leadership, the Pharisees wrested control. Thus, with the Sadducees and Pharisees representing different strata of society and opposing views in the interpretation of the Law, the general membership of the Sanhedrin included both parties. Each struggled to gain control, for naturally the decrees issued in the Bet Din depended upon the dominating power.

The belief that the Great Sanhedrin consisted of Pharisees exclusively³⁷ is weakened by the fact that the only evidence for it is a story recorded in the scholion on *Megillat Ta'anit*,³⁸ where it is reported that all the Sadducees had been driven out by Simon ben Shattah. This is doubtful. The scholion is post-talmudic; the Talmud itself does not mention the complete expulsion of the Sadducees. On the contrary, one deduces from tradition that some courts or sessions were Sadducean even at a later period,³⁹ thus indicating that the Sadducees still were active in the law. Simon ben Shattah's move was only to obtain the majority voice. Therefore the tribunals which came under the sway of the Sanhedrin in the first century B.C.E. were generally Pharisaic, as attested to by Josephus:^{39a} ". . . but they (the Sadducees) were able to do almost nothing of themselves; for when they become magistrates, as they are unwillingly and by force sometimes obliged to be, they addict themselves to the notions of the Pharisees, because the multitude would not otherwise hear them."^{39b}

SELECTION OF THE NASI

The choice of Nasi and Ab Bet Din was made by the members of the body themselves, as evidenced by the Bene Bathra choosing Hillel.⁴⁰ The incident concerning Akabiah ben Mahalalel,⁴¹ when his associates informed him that if he retracted his opinions they would make him Ab Bet Din, also shows that the discretion was within the Bet Din itself.^{41a} The Nasi's position became an hereditary office only from Hillel's time on, and was continued dynastically even after the destruction of the Temple. The patriarchate remained in Palestine in this family until about 429 C.E.^{41b}

TITLES OF THE MEMBERS

The men of the Sanhedrin usually were called *zekenim*, *zikne Bet Din* or *Soferim*. The term "zekenim" (elders) found in the Bible might have been an adaptation of the titles held by counsellors in the ancient gerousia, who had been known in Greek as *presbyteroi*. The same terminology might have been used for the sages of the Sanhedrin when addressed in Greek. "Zekenim" was a very general denomination; therefore the expressions ⁴² זקני בית דין, זקני כהונת, זקני העיר seem to indicate officially the elders of the city, of the priesthood and the judicial sages. But whereas *zaken* served to designate a member of any authoritative body, *soferim* might have referred particularly to the scholars of the halakic body.^{42a} Their enactments, indeed, were known as *dibre soferim*.^{42b}

It is interesting to note that before 70 C.E., the title "zaken" was used most frequently. Thus we have Shammai ha-zaken, Hillel ha-zaken, Rabban Gamaliel ha-zaken. It is unknown whether a representative in the Sanhedrin had any other appellation besides these, though *hakam*^{42c} (scholar) was generally applied to these men because of their knowledge of Jewish law.

The designation "rabbi" was conferred upon authorized participants in the later courts. Prior to 70 C.E., the sages did not have the official nomenclature "rabbi." The term might have been used then only in a general sense, meaning "My master." Only the Nasi had the official title *Rabban* — "Our master." Thus

we find "Rabban" appended to the Hillelite Nesi'im, Rabban Gamaliel the Elder, and his son and grandson.^{42d}

JUDGES OF CIVIL CASES

The phrase *dayyane gezerot*,⁴³ designating the title of some justices during the Second Commonwealth era, should also be studied, for scholars differ widely on its legal distinction. I. H. Weiss⁴⁴ thought that they were assessors. N. Krochmal⁴⁵ believed that they were set up by the Romans and, because of their severity, were nicknamed "dayyane gezerot" (judges of harsh decrees), a nomenclature later considered legal. A. Gulak⁴⁶ considered them special jurists in the markets, called *dayyane gezelot* because of their prerogatives in cases of robbery. It is claimed that only some of their decisions were accepted. They had limited power and their judgments were given little notice among the magistrates recorded in history. Special mention was made only of the laws which were accepted, as in the cases rendered by Hanan in his opposition to the "sons of the high priests."⁴⁷

It is no easy task to make the fine distinction between the terms; the difference between *gezerot* and *gezelot* may be a case of orthography. Yet it is plausible to say that "dayyane gezelot" simply meant "judges of larceny." The term *gezelot* is used often in the Mishnah under the heading of civil (monetary) cases judged by a court consisting of three members.^{47a} These "dayyane gezelot" might have been specific supervisors or experts of such cases, and the use of the term *gezerot* (edicts) also defined their field of activity — judges of civil cases who issued special statutes. Though they dealt only with jurisprudence belonging to the domain of the lower courts, they also came under the scope of the Great Sanhedrin because of their particular enactments.

THE MUFLAIM

Among the many qualifications set forth for a Sanhedrin, it was stipulated⁴⁸ that "at least two members of the body shall be able to 'speak' and the others 'understand.'" Rashi, in explaining this cryptic statement, declared that it pertains to a knowledge of

"languages."⁴⁹ Many, however, construe it to mean that at least two members possess the general qualities of wisdom and a perfect grasp of the law, that they know how to teach, to judge, and to present arguments.⁵⁰ The rest of the judicial body need have only a general familiarity with the law. "Two" refers perhaps to the leaders of any lower court, who were prominent in the ranks. It was not necessary that all be experts in legal interpretation; an understanding of the problem was sufficient. Thus, if a court had at least two outstanding men, it was considered a body qualified to render judicial decrees. Such men were called Muflaim.

Some have defined the term "Mufla" as "distinguished chief justice."⁵¹ Others⁵² say it means "the most learned," since it is known that it was the duty of the Muflaim to search and inquire into the decisive law.⁵³ The Muflaim were the two individuals who constituted the link and binding force between their lower court and the Great Sanhedrin; they were the solicitors who went up to the supreme court if there was any problem of appeal. Though S. Zeitlin⁵⁴ has explained the term Muflaim as official pleader or arguer before the Sanhedrin, basing it on Numbers 6.2,⁵⁵ a baraita⁵⁶ suggests that their title was derived rather from the biblical passage: "If there arise a matter too hard for thee (כִּי יִפְלָא מֵךְ דָּבָר לְמִשְׁפַּט) in judgment . . . then shalt thou arise and get thee up into the *place* . . . unto the judge that shall be in those days and thou shalt inquire; and they shall declare unto thee the sentence of judgment."⁵⁷ In the epoch of the Second Temple, this "place" was the Great Sanhedrin.

CHAPTER VIII

THE NUMBER

RABBINIC VIEWS

Tannaitic sources record that there were seventy-one members in the Great Sanhedrin.¹ This tradition seems to be authentic because in cases where the actual functions of the body are mentioned the information is given in connection with this figure.² Rabbi Judah, however, maintained that there were seventy judges.³ A third opinion, rendered by Ben Azzai in Jabneh, sets the number as seventy-two.⁴

One hesitates to negate these views because these rabbis⁵ who flourished only a few generations after the dissolution of the Great Sanhedrin lived close enough to the era to know the actual number.⁶ Many authoritative traditions⁷ were handed down not only by Rabbi Judah and Ben Azzai but also by contemporary historians as Rabbi Jose ben Halaftah.⁸

To understand the tannaitic controversy, one must review the inception and constitution of the Great Sanhedrin before 70 C.E. and also study the conflicts over the Nasi in the Academies of Jabneh and Usha.⁹ This may help to reveal the reason for the differing views concerning the number.

IN THE PERIODS OF THE ZUGOT AND THE HILLELITE FAMILY

Beginning with Jose ben Joezer and Jose ben Johanan, the first of the Zugot, the Great Sanhedrin consisted of seventy-one members, the traditional odd number in ancient courts. The Nasi and Ab Bet Din, whose dual leadership is an undeniable historic fact for that period, were included in this total. Their positions as leaders of their particular factions did not exclude them from the general membership.

After Hillel's time, a change took place. There were no more factions. The Nasi was not merely the majority leader; he became the recognized, though unofficial, religious head of the entire Jewish community, holding the title "Rabban." This situation may have resulted from internal conditions in Judea. The political opposition to the rule of Herod and Rome and the growing antipathy to the priestly dominance in the state raised the prestige of the family of Hillel in the eyes of the people. They turned to this family of Davidic lineage for spiritual leadership and interpretation of Jewish law, since the priesthood — the traditional custodians of the law — was in the hands of monarchical henchmen. The Sanhedrin therefore was for them the only guiding internal religious authority, independent of outside interference. The dignity of the Nasi was raised then to its highest point, resulting in his recognition as spiritual steward, bringing about religious unity in the land. Even conflicts between different wings of thought among the Pharisees in the Bet Din were now joined under the sway of the dynasty of Hillel.

With this elevation of the Hillelite family and the curbing of factions in the supreme court, the Nasi also absorbed the position of Ab Bet Din, heretofore designating the minority leader. This absorption is evident from the fact that tradition records only the leadership (*nesi'ut*) of Simon, Gamaliel, and Simon of the Hillelite dynasty¹⁰ during the Temple era, making no mention of an Ab Bet Din after the period of the Zugot.¹¹ Hence it could be accepted that the actual number in the Great Sanhedrin from the time of Hillel until the destruction of the Temple was seventy, unlike the period of the Zugot when there were seventy-one.

DISSOLUTION AND RESTORATION:

JOHANAN BEN ZAKKAI AND GAMALIEL II

The Great Sanhedrin was dissolved in 66 C.E.¹² About the time of the destruction of the Temple an Academy was established at Jabneh.^{12a} This Academy was known as Bet Din, but is never called Sanhedrin.¹³ Its active head, Johanan ben Zakkai, held the title "Rabban."¹⁴ In no instance was the term "Nasi" applied to

him; it was accorded only in the case of the Hillelite dynasty which regained its official position later as the Patriarchate in Palestine.

That there was no Nasi of the House of Hillel to lead the religious community immediately after 70 C.E. might have been due to a suspicion cast by the Romans upon the House of Simon ben Gamaliel I.^{14a} But one must also consider, in review of those crucial times, the recognition of Rabban Johanan ben Zakkai as a priest worthy of stewardship.^{14b} This sage was qualified to carry on in that difficult period because he alone had had the experience of leadership in addition to other merits.¹⁵ In this way the priesthood apparently retained its position of prominence, although there was no Temple. Rabban Johanan ben Zakkai's former association with Rabban Simon ben Gamaliel I may have also prompted this elevation. He held this office, which undoubtedly included the sway over the Jewish community as well as the position of head of the Bet Din, until it was transferred to the rightful Hillelite heir, Rabban Gamaliel II.^{15a}

In the days of Rabban Gamaliel II the Academy of Jabneh was of supreme importance in the restored community because there was no separate political domain. This was the government Rome recognized.¹⁶ The Nasi was now virtually the Jewish representative to the Roman Government,^{16a} particularly in the eyes of the *hegemon* of Syria who had to approve him.^{16b} It is interesting to see that Roman authorities regarded the Nasi as the official Jewish representative but they had little or nothing to do with the Academy itself.

In these circumstances the Nasi had the power to veto the ordinances of the Academy though at the same time he was its presiding officer. This is indicated by the statement^{16c} that the consent of the Nasi had to be obtained for the enactment of certain laws, especially in the matter of the Jewish calendar which regulated the programming of all Jewish life.

Undoubtedly, internal problems confronted the scholars of that era. Did the office of the Nasi, with Rabban Gamaliel II as its incumbent, include the duties of the head of the Academy, in accordance with the practice of the House of Hillel?^{16d} Or, were

the positions separate and distinct, viz., the Nasi — leader of the entire Jewish community, and the Ab Bet Din — head of the Academy? As Ab Bet Din he could guide sessions; but as Nasi he was nominally but not actively the president of the court. Perhaps the old titles — Nasi and Ab Bet Din — now had new meaning: Nasi being chief executive of the government, Ab Bet Din, head of the Academy.

The problem of the importance and the essential powers of the Nasi's position was an acute one in the days of Rabban Gamaliel II and was reflected in various events. It did not come up in Rabban Johanan ben Zakkai's term of office because his incumbency was but an interim in the Hillelite family rule. But after Rabban Johanan ben Zakkai's death there still was no Ab Bet Din. When Rabban Gamaliel II became the Nasi he combined this office with the position of Ab Bet Din, following the precedent of his ancestors, for the House of Hillel disapproved of a separate office of Ab Bet Din.¹⁷

Rabban Gamaliel II's attempt to subordinate everyone to his supreme patriarchal authority roused mass opposition.^{17a} It is generally accepted that, later, Rabban Gamaliel was deprived of his position as Nasi¹⁸ and that Rabbi Eleazar ben Azariah was elevated to his place.¹⁹ Thus the Jerusalem Talmud asserts: "They went and appointed Rabbi Eleazar to the sessions."^{19a} Nevertheless Rabban Gamaliel II continued as a member of the gathering, according to the emphasis in the Babylonian Talmud.^{19b} With the appointment of Rabbi Eleazar as head of the Academy one more seat was added to the traditional number. Hence the new total in the body became seventy-two.²⁰ To this event Ben Azzai alluded when he spoke of the traditions of that day in Jabneh.

The number "seventy-two," however, was only temporary. There later came about a reconciliation between Rabban Gamaliel II and his contemporaries. Nevertheless, Rabbi Eleazar's place as a presiding head was not taken away. The Jerusalem Talmud²¹ records that he was appointed Ab Bet Din and the Babylonian Talmud^{21a} notes that a dual leadership was arranged in the Academy; Rabban Gamaliel presided three weeks in the month and Rabbi Eleazar one week.^{21b} This duumvirate in the Academy might ex-

plain why Rabban Gamaliel sent a pastoral letter to the diaspora not in his own name but together with his colleagues.²²

**THE DISPUTE OF RABBAN SIMON BEN GAMALIEL II:
RABBI JUDAH *versus* RABBI MEIR AND RABBI NATHAN**

Years later, in Usha, *ca.* 138 C.E., strong opposition again challenged the power and authority of the Nasi. The same question was at issue: Did the office of the Nasi include the position of presiding head of the Academy (*Ab Bet Din, Resh Methivta*)? Rabbi Meir and Rabbi Nathan led the opposition against Rabban Simon ben Gamaliel II, but the latter was supported by his friend and advisor Rabbi Judah ben Illai, who also was the teacher in his household.²³

The opponents, Rabbi Meir and Rabbi Nathan, felt that Rabban Simon ben Gamaliel II's authority should be curtailed. His office of the patriarchate or head of the community was separate from the position of president of the Academy. The Nasi, therefore, was not included in the biblical number of seventy. They declared that the Great Sanhedrin consisted traditionally of seventy-one members,²⁴ and they brought proof from Numbers 11.16 which they held was the biblical foundation and support for the establishment of the Sanhedrin. The phrase, "Gather unto me seventy men of the Elders of Israel," meant that Moses as head (Nasi) was above and not included in the number,²⁵ thus making a parallel with Rabban Simon ben Gamaliel II's position in the Academy.

In his support of the Nasi, Rabbi Judah declared that the position was supreme. The Nasi was to serve also as *Ab Bet Din* and therefore was included in the total of seventy.²⁶ He supported his belief in the supremacy of the Nasi by asserting, as he is quoted in the *Sifre*:²⁷ "One among them was designated [to the position of head] above all judges."²⁸ Rabbi Judah brought to bear also the established precedent of the combined leadership held by the Hillelite dynasty during the last decades of the Temple era. It is to be recalled that with the merger of offices at that time there were only seventy members. Now this close friend and teacher in

the Nasi's house laid emphasis on the belief that the new synod too should consist of seventy members.²⁹

Thus Rabbi Judah in his support of the Nasi stressed that the organization return to the status of the Hillelite dynasty with its seventy members,³⁰ when the Nasi's position included that of Ab Bet Din. At the same time Rabbi Judah proved that the high office of the patriarchate also dominated the Academy. On the other hand, Rabbi Meir and Rabbi Nathan recalled the period of the Zugot with its seventy-one members and cited it as a precedent for separating the offices of Nasi and Ab Bet Din. It was Rabbi Meir himself³¹ who spoke of the existence of early conflicts on "reliance" or "non-reliance" among the Zugot, unlike the tradition of Rabbi Jose ben Halaftah which held that there were no controversies until after Hillel and Shammai.^{31a} Hence Rabbi Meir in his opposition to Rabban Simon ben Gamaliel II referred back to the period of the Zugot, when the number was seventy-one and differences of opinion existed between the groups headed by the Nasi and by the Ab Bet Din.

THE APPOINTMENTS OF AB BET DIN AND HAKAM

This struggle over limiting the power of the Nasi, which had been carried on for generations from the days of Rabban Gamaliel II and throughout his son's incumbency, was partially won by Rabbi Meir and Rabbi Nathan. The result was the retention of the traditional number of seventy-one. The power of the Nasi in the Academy was now limited; he was no longer considered to be the sole presiding head. A plan was adopted to elevate two members as co-chairmen called Ab Bet Din and Hakam, to act with the Nasi on all matters in the Academy.³² Thus a triumvirate was established to supersede the supreme authority of the Nasi.

The addition of an Ab Bet Din, without the Hakam, would have been sufficient. However, the two positions were created probably to please the opponents of Rabban Simon ben Gamaliel II. Rabbi Nathan became Ab Bet Din and Rabbi Meir, Hakam. Thus the Nasi's prestige in the Academy was lessened, but this did not disturb his outside influence and the retention of national dignity.

He still served as the official government liaison with the Roman Empire.

It is to be noted that only in the period of Usha, not before, are the positions of Ab Bet Din and Hakam mentioned as coexistent.³³ The position of Ab Bet Din, however, had existed prior to 70 C.E., in the time of the Zugot, but had been discontinued in the period of the Hillelite supremacy.

As to the period after 70 C.E., "Ab Bet Din" is recorded only in connection with the names of Rabbi Joshua, Rabbi Eleazar ben Azariah and Rabbi Nathan. In the case of Rabbi Joshua, however, there can be no certainty that he possessed the title, for the Talmud is vague about it.³⁴ Likewise, according to the Babylonian Talmud, Rabbi Eleazar ben Azariah was designated simply as "Resh Methivta," or as head of the Academy, one week in the month. Only in the Academy of Usha, as a result of the controversy between Rabban Simon ben Gamaliel II and his colleagues — Rabbi Meir and Rabbi Nathan — was the regular office of Ab Bet Din re-introduced. Its reappearance definitely meant the limiting of the authority of the Nasi in the direct sessions of the Academy and also the curtailment of the supremacy of the House of Hillel.

. SIMON BEN GAMALIEL II's ASSERTION OF AUTHORITY

The Nasi of the House of Hillel did not accept his limited power too long. It weakened his influence in the deliberations and legislation of the "sessions."^{34a} Therefore Rabban Simon ben Gamaliel II sought to upset this new system by introducing a special mode of procedure: "When the Nasi entered the Academy, everyone rose to his feet and remained standing until he signalled for them to be seated. When the Ab Bet Din entered, the members made an avenue by standing in lines until he reached his seating place. Everyone stood when the Hakam came in and sat down, one by one, as the Hakam passed his seat."³⁵ Rabban Simon ben Gamaliel II thereby aimed to limit the honors of the Ab Bet Din and the Hakam, placing them in inferior rather than equal places.³⁶ By this new procedure the Nasi prevailed, with the result that Rabbi Meir later left the Academy and settled in Asia Minor.³⁷ There-

with the new office of Hakam may have been dissolved. Rabbi Nathan, however, stayed in his position subordinate to the Nasi. And once again Rabban Simon ben Gamaliel II led as the Nasi with full authority, even sending epistles to the Jews in the diaspora in his own name,^{37a} as political and religious leader in the homeland.

The life of the office of Ab Bet Din, too, was brief.³⁸ It disappeared altogether in the days of Rabban Simon's son, Judah.³⁹ Rabbi Judah established his own supremacy in the patriarchate as Rabbi Judah *ha-Nasi* with full title and control over the Academy. Even an Ab Bet Din is not mentioned any more. The title Hakam, which he had passed on to his son, was not an office but laudatory recognition.⁴⁰ From that time on the office of the Patriarchate was firmly entrenched. This is attested to by the records pertaining to the relations between the Patriarchate and the Roman authorities.^{40a} Rabbi Judah *ha-Nasi* thus obtained that supremacy for which his ancestors of the Hillelite family had long fought.

THE INTERPRETATION OF THE RABBINIC CONFLICT

Far from supporting the argument that the Great Sanhedrin in the Mishnah was a retrojection of the school of Jabneh to the days of the Second Temple, as held by Kuenen and Schürer, the above analysis definitely points out that the Tannaim in Jabneh and Usha knew the exact numbers in the ancient body as part of a tradition handed down to them. Their own conflicts pertained to the position of Ab Bet Din in their Academies of the second century C.E.; and the support of their contentions was based on the historic records of the early Bet Din of the Second Temple era.⁴¹

JOSEPHUS' TESTIMONY

The talmudic evidence for "seventy-one" comprising the number in the Great Sanhedrin in the period of the Zugot seems, however, to be controverted by the non-tannaitic sources.

Josephus records that when Herod (in the time of Hillel and Shammai) captured and entered Jerusalem, he slew the members of the synedrion which tried him. The number seemed to have been "forty-five" on the basis of the narratives in *Antiquities* 14.9.4

and 15.1.2. Nevertheless one cannot prove conclusively therefrom that the number in the Sanhedrin was forty-five.⁴² As recorded in *Antiquities* 15.1.2, these men belonged to King Antigonus' party. On the other hand, according to *Antiquities* 14.9.4, Herod upon receiving the kingdom, slew "all" the members of the synedrion who had tried him under King Hyrcanus' rule. The two references therefore have no connection. Herod first disposed of forty-five of the principal men of Antigonus' party because he wished to remove those hostile to his aims. They were not members of the Sanhedrin. Later he executed members of that court which tried him under Hyrcanus. Perhaps rabbinic tradition alluded to this event in the story of Baba ben Buta.⁴³

Herod indeed killed "all," but the number is not known.⁴⁴ This "all" might have been the twenty-three of the trial court or perhaps the seventy-one who supported the verdict later in the Great Sanhedrin. Only Sameas was exempted. Thus Josephus' record of the forty-five men has no bearing upon the tradition of seventy-one of the Great Sanhedrin.

A further examination of the writings of Josephus shows that he often recorded seventy members as constituting a court. On becoming administrator of Galilee he himself chose seventy men to judge.⁴⁵ Similarly, when the Zealots invaded the Temple, they called together by public proclamation seventy of the principal men who were to act as judges in the trial of Zechariah ben Baruch.⁴⁶

Since these sources do not pertain to the Great Sanhedrin, their relevancy can be questioned. Josephus' administration and also the trial by the Zealots are events that occurred after the dissolution of the Sanhedrin in 66 C.E.^{46a} Josephus, indeed, may have modeled his body of "seventy" after the biblical passage in Numbers 11.16, but his activity occurred under the provisional government, when there definitely was no halakic Great Sanhedrin in Jerusalem. It is possible that even then his administration of justice in Galilee was in a tribunal of seventy-one members, with Josephus himself at the head. Proof of this is found in his assertion: "I called them to judge causes and with that approbation it was that I gave my sentence."⁴⁷

That the total was "seventy-one" can be confirmed from another statement: "As to great causes and those wherein life and death were concerned he (Josephus) commanded that they be brought to him and the seventy elders."⁴⁸

Biblical influence also can be recognized in the Zealots' synedrion of seventy. That court was organized with a mocking scheme of legality and formal process⁴⁹ in imitation of Moses and his seventy, thus bringing the total to the traditional "seventy-one."⁵⁰

THE ALEXANDRIAN GEROUSIA

We have established that the number "seventy-one" which included the Nasi was the customary historical membership of the Bet Din ha-Gadol in Palestine. The number "seventy" was an exception to the rule and came about because of the dissolution of the Zugot and the rise of the Hillelite dynasty. Interestingly, the traditional number of seventy-one also was adopted for the tribunal in Alexandria in the period of the Zugot, and thus it remained.^{50a} No House of Hillel flourished there to create something like the Palestinian problem: whether the office of Nasi included that of an Ab Bet Din or not. Hence the Tosefta relates, in connection with the basilica in Alexandria, that seventy-one seats were placed for seventy-one elders.⁵¹ The Babylonian Talmud confirms this report.⁵²

The Jerusalem talmudic source, however, records the number of the Alexandrian body as consisting of "seventy."⁵³ The sage through whom the full tradition of the Alexandrian body was transmitted happens to be the same Rabbi Judah ben Illai who aided Rabban Simon ben Gamaliel II in his struggle for authority. It is to be remembered that it was this same Tanna who declared that the Academy should consist of seventy members. Thus, Rabbi Judah's record of "seventy-one" for the Alexandrian body as given in the Tosefta and Babylonian Talmud apparently contradicts his own view of "seventy" for the Great Sanhedrin of Jerusalem as stated in the Mishnah.

One might accept the tradition of "seventy" in the Yerushalmi to be the correct view and thus be in accord with Rabbi Judah's opinion in the Mishnah.⁵⁴ Nevertheless it is our belief that the

Yerushalmi noted the historic fact that after the period of the Zugot there were only "seventy" constituents in the Judean institution. This was the era of the Roman procuratorship which coincided with the Hillelite dynasty. At that time the Alexandrian gerousia and the Jerusalem Bet Din ha-Gadol were contemporaneous bodies. Just as the Great Sanhedrin had seventy members in that period, so too, the same number was applied to the gerousia.

The Tosefta and the Babylonian Talmud, on the other hand, when referring to Egypt, were not concerned with the conflicts over the Nasi's leadership in Palestine or with any exceptions created there by the absence of an Ab Bet Din. Hence the number "seventy-one" was recorded in these sources; it could well be applied to the Alexandrian body, as an opinion held even by Rabbi Judah, because it was the traditional odd number.

This Alexandrian gerousia was the highest court of the Jews in Egypt.⁵⁵ It had jurisdiction over every kind of legal and administrative matter. It did not always meet in plenary sessions but was divided in sections for periodic recess or to facilitate the jurisdiction over a diversity of cases. This divisional rule also might have been the system in Palestine.⁵⁶

BIBLICAL SOURCES

The Great Sanhedrin and the later Academies, having normally consisted of seventy-one members, probably based their membership upon ancient biblical practice, where seventy men and an additional leader are mentioned to bring the total to seventy-one.⁵⁷ Thus in Numbers 11.16 seventy elders were chosen to assist Moses. In Ezekiel 8.11 there is also mention of seventy elders and Azariah ben Shafan over them. The Great Sanhedrin of seventy-one in the Second Commonwealth therefore was regarded as the traditional follower of Moses' Council.⁵⁸

PLENARY SESSIONS AND QUORUM

Apart from biblical influence, it also is possible that the traditional numbers "seventy" or "seventy-one" were retained by combining certain factors. Thus, thinking of a unification of the three Jerusalem courts, Geiger and Derenbourg suggested that "seventy-

one" consisted of $23 \times 3 = 69$, to which were added the Nasi and Ab Bet Din.⁵⁹

An examination of Rabbi Judah's tradition of "seventy" may cast more light on such a combination. He speaks of a division of the courts into three rows:

"The Sanhedrin consisted of seventy and Moses [the head] was included in the number. The Rabbis said to him, 'A court cannot be evenly balanced.' Rabbi Judah also said, 'Every city wherein there are three rows of twenty-three judges and officers of the judge and the litigants and witnesses and alibi witnesses can have a Sanhedrin.'"

According to Rabbi Judah, Moses [the typical head of the Sanhedrin, or the Nasi] was included in the number. There were sixty-nine common members, exclusive of Moses. This total is evident from this teacher's parallel statement concerning the three rows of twenty-three judges. This meant three courts of twenty-three judges each, which was the common number in a small Sanhedrin.⁶⁰ Hence Rabbi Judah's report of "seventy" actually meant a plenary session of the three combined Sanhedrins of twenty-three, plus the Nasi.^{60a}

In all, the plenary number in the Great Sanhedrin varied between seventy and seventy-one, according to events recorded in ancient tradition. But the basic quorum necessary at any sitting was only twenty-three.⁶¹

Thus, historic analysis shows that in the early period of the Hillelite dynasty the plenary total was seventy (sixty-nine common members plus the Nasi). In the time of the Zugot, with both the Nasi and Ab Bet Din as heads, the number was seventy-one.⁶²

CHAPTER IX

THE MEETING PLACE

SCHOLARLY OPINIONS

The seat of the Great Sanhedrin was in Lishkat ha-Gazit.¹ The Mishnah records that it was situated on the south side of the inner Temple-court, in the vicinity of two other chambers, Lishkat ha-Etz and Lishkat ha-Golah.²

To identify the exact site of the chamber, we must resort to Josephus' description of the wall about Jerusalem. He records that "Beginning on the north at the tower called Hippicus, it extended to the Xystus, and then joining the council-chamber (*boule*) terminated at the western portico of the Temple."³

Availing himself of these two sources, Schürer⁴ attempted to identify Lishkat ha-Gazit with the boule by declaring that "Gazit" was Xystus. To distinguish it from the other chambers in the Temple esplanade, the boule was called Gazit because of its location — the "hall beside the Xystus." Thus, though the Mishnah⁵ clearly stated that Lishkat ha-Gazit was within the inner court, Schürer⁶ preferred to accept Josephus' description and believed that the boule was upon the Temple Mount itself, on the western side of the enclosing Temple wall, outside of the upper part of the city.

Few scholars accepted the identification of boule with Lishkat ha-Gazit. Büchler⁷ maintained the traditional view that the Gazit Chamber was part of the holy territory inside the inner Temple-court, since the priests who recited the Shema and cast lots therein could not leave the wall of the inner court wearing their priestly garments.⁸ In his opinion, the boule of Josephus was the supreme council of Jerusalem which met in the upper city.

Bacher,⁹ on the other hand, believed that the boule of Josephus referred to the last days of Jerusalem when the Jews were driven

from the Temple area, and the meetings of the council were held in the city proper. According to his explanation, the boule was near the Xystus, some distance away from the Temple.

There is even more speculation about the site of the Gazit Chamber when we try to locate the place of a Lishkat Parhedrin.¹⁰ Schürer regarded *parhedrin* as a synonym of boule and Lishkat ha-Gazit. Bacher, however, thought that the parhedrin was the private residence of the high priest, and perhaps also his private council chamber. He believed that the *bouleutoi* or *parhedroi* might have assembled in this house of the high priest before occupying their seats in the public sessions of their *synedrion*.^{10a}

It seems to be a reasonable assumption that the different opinions of scholars concerning the nature of the Sanhedrin influenced their particular view of the location of its seat. Schürer, thinking of the Great Sanhedrin as an all-functioning institution, placed its seat on the outside of the Temple wall but still on the Temple Mount. Büchler, because of his view of the two Sanhedrins, placed the Sanhedrin Gedolah (which in his opinion was a priestly council) in the Gazit Chamber, while he held that the administrative boule met in Jerusalem. Bacher's view of one supreme council bearing different names led to the opinion that Josephus' description of the boule referred to the last days of Jerusalem when the Great Sanhedrin had to leave the Temple Mount.

Bacher further decided, in order to reconcile the discrepancy between the procedure of the Gospel trials before the high priest and the trial procedure as recorded in the Mishnah, that the Lishkat Parhedrin was the private residence of the high priest. Here a private caucus or preliminary trial used to be held. After such meeting the Sanhedrin members would go into the public chamber in Lishkat ha-Gazit in accordance with mishnic procedure.¹¹

TEMPLE PRECINCTS

Another attempt is made in this study to identify *Lishkat ha-Gazit*, the *boule* and the *parhedrin*, so as to determine precisely where the Great Sanhedrin met. Knowledge of the exact place of meeting will help, of course, in understanding the nature of the institution.^{11a} A priestly court (Bet Din shel Kohanim) naturally

would meet within the Temple precincts, and an institution of a legislative-judicial nature, from which the people sought halakic appeal (the Great Sanhedrin), would be not entirely within the exclusively sanctified or priestly section of the Temple grounds, but somewhere nearby. A body for executive administration (boule) would, of necessity, be found in Jerusalem. We know that three such bodies existed under the system of government in the Second Commonwealth,¹² and their particular locations must be differentiated and determined.

Before examining the description of the Gazit Chamber as given in Mishnah Middot we must draw a clear picture of the different precincts in the Temple Mount. We cannot depend only on Josephus and the mishnic descriptions, though both are valuable as starting points from which to project a clear picture. We must also go to modern archeological excavation and research, and to the studies on the names of the localities.

It is known that the axis of the Temple was fixed east and west and the arrangement of the Temple and its courts was in an oblique position to the enclosing walls of the building.¹³ That is, the western cloister of the outer court was practically parallel with the southeastern portions of the inner precincts.¹⁴

In such an arrangement, the southwestern portion of the Temple area became the most advantageous point of entrance for people coming from the upper city. This is corroborated by historic evidence. The sides of the Temple hill originally rose in a steep slope, but when Herod wanted more space for the Temple area he extended the hill by filling in the valley.¹⁵ On the western edge of the Mount he built a pier supported by pillars and massive masonry. The roof or pavement of this pier was level with the Temple area. Today it is known as Robinson's arch; in Josephus' day this extension of the western side of the Temple was called Xystus. It was joined to the upper city by a bridge, like an open terrace, on the westerly edge of the Temple Mount,^{15a} and extended diagonally with increasing area toward the south, until it joined the south side of the Temple. Because of this area, the people from the city used it as their entrance to the sanctuary.

Tradition also records that the widest expanse on the Temple

area was at the south, next at the east and then at the north. The area of least open space was at the west.^{15b} Hence, when persons came from the upper or lower city to the Temple Mount, they crossed through the main entrances on the south, through the Huldah Gates.¹⁶ Excavations on the Temple site have proved that the pavement, or Xystus, probably led up to the Huldah Gates which were near the southwestern area of the outer court.¹⁷

According to Josephus, then, it was at this lower point of the western cloister of the Temple, towards the south, at the place known as Xystus, that there was a council house called boule. Here, too, on the south side of the inner court, i.e., near the western cloister, according to the Mishnah was Lishkat ha-Gazit.^{17a}

The location of the boule and Lishkat ha-Gazit at the southwestern portion of the Temple may be better understood if we recall that buildings were erected upon the new terrace on the southwest of the Mount. Since this extension did not possess the sanctity of the nearby areas, these structures likewise had various degrees of holiness. Some extended half on priestly ground and half on non-sacred territory, whereas others may have been entirely on secular ground.¹⁸ The Lishkat ha-Gazit, too, as traditionally recorded, was built half on holy ground and half on non-sacred area.¹⁹ Furthermore, the Gazit Chamber was modelled in the pattern of a big basilica²⁰ with two entrances, one for the laity from the outside²¹ and the other for the priests entering from the Azarah (inner court).²² It is believed that a row of small stones served as the line of demarcation.²³

Thus, the accurate place of the Gazit Chamber was in the southwestern portion of the Temple Mount. This is the site of the Xystus described by Josephus and the area which archeological research has proved was added to reach the level of the Temple grounds. This location is corroborated by the mishnic description of the southern extremity of the inner court.

LISHKAT HA-ETZ OR PARHEDRIN^{23a}

Identifying Lishkat ha-Gazit at a location near the Xystus does not necessarily identify Xystus with "Gazit," nor does it establish in any way the place and the function of the boule nearby.

To ascertain the exact site we must identify first the Lishkat Parhedrin mentioned by the Mishnah. This will help to clarify also the precise locations of Lishkat ha-Gazit and other chambers in the Temple, and give a clear picture of the different Temple activities.

Mention already has been made of the two chambers, Lishkat ha-Etz and Lishkat ha-Golah, adjoining the Gazit Chamber. Rabbi Eliezer ben Jacob admitted that he had forgotten the use made of the Lishkat ha-Etz, but Abba Saul identified it with the "Chamber of the High Priest" (Lishkat Kohen Gadol). To fix its exact location Abba Saul declared that the Lishkat ha-Etz was situated "behind" the other two and that one roof covered all three chambers.²⁴ Nevertheless, even his identification is still vague.²⁵ An intensive study of the Temple environs on the south side of the inner court, i.e., near the western cloister, is the only means to establish with certainty the location of the Great Sanhedrin.

According to the Mishnah, there were three gates to the inner court on the south side: the Kindling Gate, the Gate of the Firstlings, and the Water Gate.²⁶ Above the Water Gate was a tower consisting of two rooms: Abtinas and High Priest's Immersion, where the priests maintained a guard.²⁷ The former was designated a chamber of the high priest²⁸ to which he was led on the eve of the Day of Atonement, to prepare for his ritual bath in the adjoining chamber.²⁹ But it is also known that seven days before the Day of Atonement the high priest was isolated in the Parhedrin and from there was conducted to the Abtinas.³⁰

Where was this Parhedrin?³¹ Since it is regarded as the residence of the high priest for seven days, the Parhedrin may be associated with the Lishkat Kohen Gadol mentioned by Abba Saul, and identified by him as Lishkat ha-Etz.^{31a} Thus, Lishkat Parhedrin, Lishkat ha-Etz and Lishkat Kohen Gadol were one and the same. According to the Talmud, then, the high priest had two chambers: the Parhedrin and the Abtinas.³² His permanent residence may have been in the city, but for seven days before the Day of Atonement he had to isolate himself in the Parhedrin.^{32a} At the end of the seven days he was admonished and

guided in his ritual by the elders of the Bet Din who were close by in Lishkat ha-Gazit. The proximity of the Gazit Chamber to the high priest's chamber is meaningful; it facilitated supervision.³³

Later on, when the high priest went to prepare himself for his ritual, the elders of the Court (of the Gazit Chamber) took him to the elders of the priesthood. These priests now conducted him to the other chamber, the Abtinas,³⁴ for his preparation.³⁵

This procedure indicates that the Parhedrin, though a priestly compartment, still was not vested with the sacredness of the Abtinas, since the high priest left the Parhedrin for the Abtinas to prepare for his ritual bath. It also fixes the location of the Abtinas chamber near the Water Gate, for the "Chamber of the High Priest's Immersion" was above the Water Gate and is identical with the Golah (fountain) room of Mishnah Middot. Hence the Abtinas was situated closer to the sacred interior of the Azarah.

Both the Parhedrin and the Abtinas extended outside of the southern part of the inner court and into the westerly direction of the Temple Mount which was non-sacred, secular territory. This division into secular and sanctified sections is established by the fact that one section, the Parhedrin, the secular-half, was the temporary residence of the high priest, and the other, Abtinas, the sanctified area, was the chamber for ritual preparation.

In the Mishnah, Abba Saul designated Lishkat ha-Etz as being "behind" the Gazit and Golah. This can only mean that the Parhedrin or Lishkat Kohen Gadol was directly west of the non-sacred portion of the Gazit, and directly south of the Golah which was wholly on priestly ground.³⁶

All the chambers, however, were near the southwestern outer cloister of the Temple Mount. Though the Parhedrin was known as the residence of the high priest for seven days, it seems that generally it also was recognized as the meeting place of the Bet Din shel Kohanim.³⁷ The association of the names *parhedrin* and *bouleutin* with that body³⁸ is thus meaningful, for the "Chamber of the High Priests" or *parhedroi* is also designated in the Talmud as the Lishkat Bouleutin.³⁹ This identification corresponds to the boule mentioned by Josephus as being near the Xystus. Therefore it is a foregone conclusion that the Gazit and boule were not the

same, but rather adjoining chambers; the Gazit Chamber being the seat of the Bet Din ha-Gadol and the boule (Parhedrin) — the council house of the priests of the Temple and the office of the high priest.

To summarize the usage of the terms: boule = **לשכת בלווטין** = **לשכת הצעץ** = **לשכת כהן גדול** = **לשכת פרהדרין**. These four names for the priestly council seem to point to the same idea, viz., that this chamber was the temporary residence of the high priest and also his council room. Consequently, it is not too bold to suggest that the name **צעצת הכהנים**^{39a} really should read **הצעחה** (boule) "counsel," written **'צענה**.

To recapitulate, the Gazit and boule were chambers that were half holy and half non-sacred. The non-sacred half extended out upon the non-sacred territory and into the southwestern portion of the Temple Mount; thus it was accessible to the crowds that came across the valley from the nearby upper city. The Gazit was partly secular for the benefit of the people who came up from the city for interpretation of the law. The priests sat in the sanctified area therein. The Parhedrin (or Lishkat Kohen-Gadol) was also semi-secular because it served as the suite of the high priest, and therefore had to have a mezuzah.⁴⁰ It was here, too, that the Bet Din of Priests met for deliberations pertaining to their caste. Moreover, the declaration of Abba Saul that there was one roof for all testified to the construction of the buildings; though half of the roof was a covering for the Azarah ground, the other half extended upon non-holy territory.^{40a}

It is not probable that the Lishkat ha-Etz was constructed of wood in contrast to the Gazit, of stone. The fact that it was under the same roof as the Gazit Chamber makes such a view untenable.⁴¹

We can now understand fully the reference in Mishnah Middot to the three chambers: Gazit, Etz, and Golah. The Gazit was close to the Parhedrin (also called — ha-Etzah [ה'צָה], boule) because the priests were admonished there by the elders of the Great Sanhedrin before their daily service. It was from the Parhedrin that they came into the Gazit for the recital of the Shema and the casting of lots.⁴²

The position of the Golah Chamber also is clarified by the fact

that the high priest had to make his ablutions here on the Day of Atonement. Hence it is reasonable to assume that the Golah (fountain) chamber was in close proximity to the Water Gate.^{42a} It further enabled the elders in the Gazit to supervise the ceremonials of the priests in the Golah. It was here, too, that the libation of water on Sukkot was performed; this was also supervised by the Pharisaic elders of the Great Sanhedrin.⁴³ Thus we conclude that the combined Gazit, Etz and Golah building was near the south-western portion of the Temple Mount near the Xystus terrace.

LISHKAT HA-GAZIT

We have established the location of the Gazit Chamber. Now it is necessary to define the term itself. The name "gazit" is found in the Bible, and is generally translated as "hewn stone."⁴⁴ The Greek-speaking people understood "gazit" as meaning "polish."⁴⁵ The Septuagint renders the words "batte gazit" in Amos 5.11, as "polished houses," using the Greek word *Xystus*. This perhaps referred to the colonnade generally found in Greek cities on the side of the gymnasium and called *Xystus*.⁴⁶

The identification of "gazit" with *Xystus* in Greek usage, or even the proximity of the *Xystus* to the Gazit on the Temple Mount, does not mean that they were identical. Nor does it necessarily mean that the name of the court had any connection with the nearby bridge or colonnade,⁴⁷ the *Xystus*, as identified by Schürer. The traditional name of Gazit may have been taken from the biblical description of the construction of the altar⁴⁸ and also Solomon's construction of the Temple.⁴⁹

ROOMS FOR STORAGE OR ADMINISTRATION

An examination of the many special chambers of the Temple aids in placing the location of the Gazit Hall. All rooms for storage of oil, salt, hides, wood, stone and also those for general priestly use — rinsing, bathing, immersion — were on the north side of the inner court.⁵⁰ These were a distance away from the popular entrances on the south side of the inner court. Those chambers used only for the laity, however, were close to the upper city and near the popular entrances on the south.⁵¹ Among these were

halls for ceremonial purposes, for deliberation and administration. The different southern gates including the Water Gate, where the people could come to observe the ceremony of the drawing of water on the Sukkot Festival,⁵² belong to this category. Similarly, the people were vitally interested in the high priest's Day of Atonement Service; the Talmud portrays how eagerly they awaited his appearance after his worship.^{52a} Hence the special Abtinas Chamber for high priestly separation or holiness also was on the south side⁵³ of the inner court, near the popular entrances.⁵⁴

When we recognize that only the special administrative rooms were on the south side of the inner court whereas all utility and regular service compartments were on the north, it cannot be said that the Etz Chamber on the south was a storage place for wood.⁵⁵ Such storage space would be on the north; indeed there was a wood chamber in the northeast.⁵⁶ Therefore from its location alone it is to be seen that Lishkat ha-Etz was a council-house and hence fittingly next to the special seat of the Great Sanhedrin — Lishkat ha-Gazit.⁵⁷

The proximity of these two chambers may be due to the fact that in the days of the gerousia, when the priestly council and the halakic body functioned as one, there may have been one large council hall. However, in the separation of the Temple priestly council from the halakic Bet Din at the time of the foundation of the Great Sanhedrin in 141 B.C.E., a physical division was made between the Lishkat ha-Etz and the Gazit. It is traditional that the priestly and secular portions of the chamber were divided by marking stones.⁵⁸

BOULEUTERION

The location of the Gazit and the Parhedrin having been established, it now becomes necessary to determine the location of the boule mentioned by Josephus. He did not mention the Gazit explicitly because he was not interested then in the features of the law; and when he wrote his works the Great Sanhedrin no longer was in Jerusalem. However, as a priest he had knowledge of the precincts of the Temple and therefore in his description of the walls he mentioned the priestly chamber, the boule (which the

Mishnah called Parhedrin), disclosing that it was near the Xystus. It is possible that the high priest conducted his preliminary investigations here of trials which had to do with state offenses and which had to be submitted for Roman verdicts.^{58a} This hypothesis alone explains Josephus' interest.

Josephus also spoke of a *bouleuterion*, saying that it was burned together with the upper city.⁵⁹ Though "boule" and "bouleuterion" are like terms, it would be interesting to know if they applied here to the same location or institution.⁶⁰ According to Josephus, the Romans first destroyed the Temple and the buildings about it;⁶¹ only later did they destroy the bouleuterion and the upper city.⁶² Therefore we conclude that the boule near the Xystus, destroyed first, was apart from a bouleuterion or assembly seat situated in the upper city, destroyed at a later date.⁶³

The boule, as noted above, was the priestly council hall, situated on the Temple Mount. In the earlier battles it was consumed by the fire which destroyed the Temple and all the surrounding buildings.⁶⁴ Titus stood near this spot of the Xystus when he spoke to the Jews in the city.⁶⁵ When the insurgents even then refused to surrender, Titus ordered the soldiers to burn and plunder the city, which they finally did, destroying with it the "bouleuterion."⁶⁶

Titus, therefore, followed this procedure: Attacking Jerusalem, he first burnt the Temple Mount, in which were the Gazit and boule, and then later proceeded to burn the city itself, in which was the bouleuterion.

In all probability, this bouleuterion was the council house of the principal men of the city of Jerusalem, the seat of communal affairs. It was thus distinguished from the Bet Din ha-Gadol in Lishkat ha-Gazit, and from the Bet Din shel Kohanim (boule) in Lishkat Bouleutin (ha-Etz) which were on the Temple Mount.

TRIPARTITE GOVERNMENT⁶⁷

To summarize, there were three bodies located separately and apart during the Second Temple era. These represented the three jurisdictions: (1) the State, (2) the Temple and (3) the Halakah.

1. The seat of political administration (boule) was in the

bouleuterion in Jerusalem.⁶⁸

2. The seat of Temple ritual (Bet Din shel Kohanim) was in the Parhedrin known as the Lishkat Kohen Gadol or Etzah (ha-Etz) or Bouleutin.

3. The seat of the religious life (Bet Din ha-Gadol) was in Lishkat ha-Gazit, the hall of halakic decision.

Only the latter two — the Gazit and the Lishkat Kohen Gadol (ha-Etz) — were under the same roof in close proximity, but they were separate chambers. They were known to be on the south side of the inner court, or near the southwestern portion of the Temple Mount, close to the popular entrances from the city.

The existence of the three chambers supports our contention that three different bodies were organized in 141 B.C.E. in Judea, at the time of the foundation of the Second Jewish Commonwealth.

CHAPTER X

FUNCTIONS OF THE BET DIN HA-GADOL

SCOPE

Many of the records pertaining to the functions of the Great Sanhedrin are considered theoretical and academic, voiced by scholars who had lived and taught in different academies in an age subsequent to the era of the Second Temple.¹ In many statements, however, there is at least a kernel of historical truth included in the tradition which had been handed down carefully by word of mouth. Often such functions and laws, though not put into practice, indicate the constitutional rights of the Bet Din ha-Gadol.

The Great Sanhedrin was the body which regulated the religious life of the Jews and gave sanction to practices connected with religious questions, in accordance with the Bible (the constitution) and the tradition of Halakah (the common or enacted law). The decision of the Bet Din ha-Gadol was final and its decrees were obeyed by Jews even in the diaspora.^{1a} For example, Philo in Egypt, speaking of a case of the Sotah (the woman suspected of adultery), pointed out that the Court in Jerusalem was supreme and to it would her trial be transferred.² Though biblically such trial was a priestly function, Philo fails to mention the high priest but refers only to the Sanhedrin.

The Great Sanhedrin was more legislative than judicial. Nevertheless its main function was to probe into the constitutionality of the law.³ Often too it decided whether a case or law constituted a cause for action to be committed or remanded for judgment.^{3a} Such scope of functions was based on the fact that ancient jurisprudence, especially as practiced by the Jews, did not make a marked distinction between the enactment of new laws (legislation) and the interpretation of old laws (adjudication). The whole

concept of law stemmed from the Torah. Enactment (*takkanah*) in the Talmud usually was by means of interpretation (*midrash*) of the biblical verse or the established Halakah.^{3b}

At the time of the existence of the Sanhedrin, political matters were vested in the state rulers. Yet, in the performance of religious services,⁴ the high priest, who was the nominal ruler of the state before 70 C.E., was subject to the Bet Din.^{4a} Similarly the king, though absolved in the Talmud and declared not subordinate to ordinary legislation, reverently adhered to the religious dictates of the Sanhedrin.^{4b} Royal and priestly recognition of the spiritual authority of the Bet Din thus elevated it to a place of high prestige in the state.

JURISDICTION

a. Religious Authority

In the study of the Great Sanhedrin it is important to establish the scope of its jurisdiction.⁵ Did the authority of the Bet Din clash with Roman controls? Or was it limited by the Romans?

An analysis of the Roman procurator's position in Judea shows that the jurisdictions were of a different nature and therefore did not conflict. The Great Sanhedrin was an institution for the Halakah — a legislative, interpretive, judicial body of a religious nature in which Rome was not interested. It was authority for the Jewish people in the practice of their religion, and therefore acknowledged by Jews all over the world.^{5a} Because of its standing as the supreme body to interpret the religious law, even the Jews in Alexandria or in Babylon turned to the Palestinian Sanhedrin for guidance. Its power of enforcement in the intercalation of the month illustrates the manner in which it influenced the diaspora. Its decision was always eagerly awaited, for the calendrical arrangement set the observance of the holidays and consequently governed the practice of the Jewish faith everywhere.

A specific example of religious jurisdiction is contained in the talmudic story of the hanging, at the order of Simon ben Shattah, of eighty women accused of witchcraft.⁶ Some scholars call this account fabulous because Askalon was not under Jewish rule; and Simon ben Shattah could not have condemned anyone outside

of Judea.^{6a} On the other hand, there were those who believed that at the time of Simon ben Shattah, Askalon did belong to the Jews and evidence for this can be found in Maccabees,⁷ Josephus,^{7a} and the Tosefta.^{7b} The question is indeed a moot one, but it may be interesting to observe that though Askalon was not under Jewish civil administration — it was a Hellenistic city under Roman jurisdiction — nevertheless the Sanhedrin had religious authority over its Jews.^{7c} The Jewish courts of Askalon rendered its decisions but these had to be sanctioned by Simon ben Shattah as head of the Great Sanhedrin in Judea. In that way he might have condemned those women who transgressed the biblical law of witchcraft. A kernel of truth may thus be found in the mishnic narrative.

The moral influence of the Bet Din ha-Gadol of Jerusalem was greater than its actual power of enforcement, for the respect for Jewish tradition was deep. Because of the proximity of the Sanhedrin to the Temple, which was the ritual center of Judaism, the various recommendations of the Court were thus regarded by Jews outside of Judea as rules for the direction of their own way of life. The Temple and the Sanhedrin were the supreme uniting forces in Jewish life. We can assume that the people who visited the Temple on festivals took home with them instructions, knowledge of halakic decisions and the binding laws of the Great Sanhedrin. Josephus points out in *Against Apion* that the Jew is loyal to the laws even if he is distant from Jerusalem.⁸ Therefore, even in the tumultuous days of the Second Temple, though the Bet Din ha-Gadol and its system were not vested with political authority in Palestine and definitely not outside of it, its power was inestimable because of its judicial and religious rulings. In short, it was religion which bound the different Jewish communities of the diaspora to each other and to Palestine.⁹ The Temple was the ceremonial link, but the Great Sanhedrin was the binding power of justice derived from the source of divine inspiration in the Bible.

b. Limitation of Powers

We have only meager information concerning the separate powers of the various bodies functioning in the era of the Second

Temple.¹⁰ We know definitely of the functions of the Temple priestly body, the rule of the monarchs and the judgments of the Bet Din. But was there any overlapping? Though the three branches of government, (1) administration, (2) priesthood and (3) the legislative-judicial, were separate, clashes among them were inevitable. Each was probably jealous of its power and resented encroachment. The complexity of Jewish law which combined ritual with court decisions might have brought about considerable overlapping. Yet we recognize that the monarchs did not encroach to any great extent on the religious rights of the Great Sanhedrin. Herod and other kings who reduced much of the constitutional authority of the Sanhedrin, from the right to deal with general cases to a body limited to judging religious crimes and to issuing rules of ritual, did so because of their personal antipathy to it. Hence, laws recorded for the Great Sanhedrin and now regarded as academic were actually and originally the constitutional rights of the Bet Din ha-Gadol.

Religious jurisdiction remained intact for the Great Sanhedrin, despite priestly or monarchical resentments.^{10a} Later, even the Roman procurators established the principle of non-interference with religious scruples, and Jewish courts were left free to administer justice in their own way and to execute the penalty of the law. Justice in Judea generally was a matter of religion, and the officers of the local Sanhedrin handled it. Minor cases involving fines, corporal punishment and also civil matters were probably tried in the lower courts under the Sanhedrin system without interference from the Roman government. Rome also followed this policy in its other provinces.¹¹

c. Capital Punishment

Did the Jews have the right to pronounce the death penalty? Rabbinic and non-rabbinic sources answer in the affirmative.¹² In matters of religious scruples the Sanhedrin might even have had special jurisdiction over a non-Jew who violated the Jewish law,¹³ as in the case of one who trespassed on the Temple grounds. Titus declared that this right never was taken from the Jews.^{13a} There is also the presumption that the Jews had judicial autonomy over

both Jews and non-Jews in their territory.¹⁴ The Roman government, aiming to give freedom to the application of Jewish customs,¹⁵ suppressed only sedition or brigandage.

GENERAL ACTIVITIES

A description of the activities of the Great Sanhedrin may be gained by reviewing the work of the elders (*zekenim*) or wise men (*hakamim*) of that period.¹⁶ For instance, the various decisions of the *Zugot*¹⁷ portray the different functions of the court, for these judgments were not individual pronouncements, but rather issuances or writs of the entire court. As such we may regard the *takkanah* (modification of the law) of *Erub* introduced by Rabban Gamaliel I to permit journeying on the Sabbath day two thousand cubits beyond one's city limit. The *takkanah* of *Erub* for carrying an object on the Sabbath was instituted in the time of Rabban Simon ben Gamaliel I shortly before 70 C.E.^{17a}

Likewise, one should think of the decrees of the High Priest John Hyrcanus¹⁸ not as personal acts; they are decisions promulgated by the court in his regime and therefore recorded in his name. In general, the history of the Halakah during the period before the destruction of the Temple reveals many examples of official supreme court decrees in the form of *takkanot* and *gezerot*.^{18a}

Interestingly, the enactments of the period before 70 C.E. are recorded only in the name of the *Nasi*, without immediate mention of a *Bet Din*.^{18b} Those ordinances, however, which were promulgated after 70 C.E. record the presence of a *Bet Din* together with the *Nasi*, as in the case of "R. Judah and his *Bet Din*".^{18c} Ch. Tschernewitz,^{18d} following I. Halevy,^{18e} sought to explain the variation by asserting that the *Nasi*'s power declined after 70 C.E. and consequently the *Bet Din*'s prestige was enhanced. Feigin,^{18f} on the other hand, believed that prior to 70 C.E. the *Bet Din* was a permanent institution needing no special mention; afterwards it became a temporary body which had to be convened by the *Nasi*.

Neither view can be accepted because of the recognized facts that (1) after 70 C.E. the *Nasi*'s power increased^{18g} and (2) the

Academy (Bet Din) continued under the Patriarchate as an established institution until about 425 C.E.; it was not a temporary body.^{18h} The variation, however, can be best explained by understanding the nature of the Nasi's authority in the different eras. Before 70 C.E. the Nasi did not receive his authority from the government. The halakic Sanhedrin was separate from the political body of the state. The Nasi was head of the Bet Din by virtue of appointment by his colleagues, the members of the Sanhedrin, as evidenced by the story of Hillel and Bene Bathyr. Hence the pronouncements of the Nasi were normally the decisions of the entire court. However, after the year 70, the Nasi, and especially R. Judah the Prince, became the patriarch of the Jews, recognized by the Roman authorities. He combined both religious and political power. His authority came not from the Bet Din but from the government. He could not be removed and he alone had the power to appoint the members of the Academy. Therefore the term "and his Bet Din," as used after 70 C.E., designates the subservience of that body to the Nasi. Such conditions did not prevail in the Great Sanhedrin before the destruction of the Temple.¹⁸ⁱ

SOURCE OF LAW: THE TORAH IN THE AZARAH¹⁹

The Great Sanhedrin was empowered with the sacred duty of maintaining the Law.^{19a} Its particular concern was the preservation of the Torah — the source of all Jewish law, indeed, its constitution — the Pentateuch, for on the basis of this text constitutional rights were established and affirmed.

It is assumed that the priests of the Temple had in the Azarah a scroll of the Torah which became the authentic and official copy for use for all purposes of ritual, such as those pertaining to the Day of Atonement, for administering oaths, for reading by the king and for admonishing the army. Probably the texts of the Torah read in the synagogues of various communities were exact copies of this official scroll corrected in the Temple under the supervision of the Sanhedrin and thereby legally authorized for public service.^{19b} In this activity the Bet Din established the sanctity and also the rule of canonicity of the Bible.

FINAL APPEAL

a. The System

The Great Sanhedrin was the final court of appeal when a problem arose wherein the interpretation of the law was involved. The question generally was put before the supreme court by the representatives of the smaller court, the Muflaim, who appeared with the litigant.²⁰ This explains the instances on record of prominent rabbis coming before the Bet Din to obtain decisions in the law.²¹

This system of appeal is carefully outlined in the tannaitic description:²²

"There were three courts [in Jerusalem]. One convened at the gate of the Temple Mount, one at the gate of the Temple Court, and one in the Gazit Chamber. They [the rabbinical questioners] used to come first to the court at the gate of the Temple Mount. One would say, 'In this way have I expounded and in that way have my colleagues expounded. In this way have I taught and in that way have my fellows taught.' If they [of the Temple Court] knew of a tradition, they told it to them. Otherwise, they came to the Bet Din ha-Gadol in the Gazit Chamber whence the law went forth to all Israel, as it is written: 'From that place which the Lord shall choose.'"²³

Josephus, in *Antiquities* 4.8.14, also hinted at this system of appeal: "But if these judges be unable to give a just sentence about the causes that came before them, let them send the cause undetermined to the Holy City and let there the high priest, the prophet and the gerousia determine as it shall seem good to them."²⁴

Though many scholars have inquired into this passage, Josephus' mention of gerousia is to be regarded only as an academic paraphrasing of an ideal, and not as an actual picture of the contemporary system of appeals. It is simply based on the text of Deuteronomy 17.8:

"If there arise a matter too hard for thee in judgment . . . then shalt thou arise and get thee to the place which the Lord

thy God shall choose. And thou shalt come unto the priests, the Levites, and unto the judge that shall be in those days and thou shalt inquire and they shall declare unto thee the sentence of judgment. And thou shalt do according to the tenor of the sentence which they shall declare unto thee from that place which the Lord shall choose. . . .”

b. Instances of Appeal

The Mishnah records two instances of decisions handed down in the Gazit Chamber. With reference to harvest time, it is noted: “It once happened that (Rabbi) Simon of Mizpah sowed [his field and came] before Rabban Gamaliel and they [Simon and Rabban Gamaliel]^{24a} went up to the Gazit Chamber to inquire. Nahum the Scribe said, ‘I have received a tradition from (Rabbi) Measha, who received it from Abba who received it from the Zugot who received it from the prophets as an Halakah given to Moses from Sinai, that if a man sowed his field . . .’”²⁵ It is evident here that the court in the Gazit Chamber was the final authority in the interpretation of the oral law and the common tradition which had passed down through generations.

This Mishnah reveals also that the various records of court proceedings or of traditions were kept by a scribe. He would cite the accepted decision or define in detail the manner of adhering to the ritual practice of the law, in accordance with tradition. This procedure refers to the days of Rabban Gamaliel the Elder, the only one of that name who lived in the time that the Gazit Chamber still existed.

Another instance of a final decision by the Great Sanhedrin is recorded in the testimony of Rabbi Zadok: “If flowing water was led through a channel made from foliage of nuts, it remains valid. . . . Such a case happened at Ahaliyya and when the case came before the sages in the Gazit Chamber they declared it valid.”²⁶

These two instances are the only decisions on record rendered in the Bet Din in the Gazit Chamber before 70 C.E., but they

are unquestionably adequate enough to show the principal function of the court.²⁷

c. Irrevocability of Decision

The judgments of the Great Sanhedrin were irrevocable and final. Theoretically, only a court possessing greater power through numbers or recognized as superior in wisdom could amend or repeal decisions in Jewish law.²⁸ For reasons of tradition and sentiment, however, it was felt that a succeeding court did not possess as much prestige as its predecessor. There are, nevertheless, cases of courts during other periods repealing or changing some of the earlier decisions of the Great Sanhedrin.^{28a} Thus, Shemaiah sought a change in the law pertaining to the guilt of one who sent an agent in crime, but did not commit the crime himself.²⁹ According to the ancient Halakah only the slayer was responsible, not the person who had commissioned him. But after the death of Hezekiah and his men, for which Herod was known to be responsible, the Nasi amended the law to punish an instigator as well, marking thereby a new phase in the development of the Halakah.

To prove further the power of the Sanhedrin in reinterpreting the law we go to the tannaitic attitude towards battle on the Sabbath.³⁰ In pre-Hasmonean days the Jews withdrew from engaging even in defensive war on the Sabbath. Thus, the city of Jerusalem was captured by Ptolemy I on a Sabbath day (*ca.* 320 B.C.E.) "as the Jews did not oppose him."^{30a} Later on, Mattathias the Hasmonean (*ca.* 168 B.C.E.) was the first to sanction defensive war on the Sabbath.^{30b} This innovation was honored because, as Josephus notes, in Pompey's time (*ca.* 63 B.C.E.) "the Jews only acted defensively on the Sabbath days."^{30c} "For the law permits us to defend ourselves against those who begin a battle and strike us, but it does not allow us to fight against an enemy that does anything else."^{30d} Only later, when Hillel (*ca.* 30 B.C.E.) reinterpreted the laws of warfare on the Sabbath,^{30e} did the people accept the decision based on his authority. Therefore in the war with Rome, "The Jews . . . sprang . . . into the fray, with no thought for the seventh day of rest, for it was the very Sabbath which they regarded with special reverence."^{30f}

REPEAL, MODIFICATION AND INTERPRETATION OF THE HALAKAH

Tannaitic literature records many instances of biblical laws being modified by rabbinical interpretation.³⁰ These include the *prosbul* by Hillel for the economic good;³¹ divorce legislation enacted by Rabban Gamaliel the Elder (about 50 C.E.) "as a precaution for the general good";³² regulations of sacrifices by Rabban Simon ben Gamaliel I (about 60 C.E.), "who went into the court and taught,"³³ thereby bringing about a lowering in price; the seven decrees concerning the regulation of the Temple service and the offering of sacrifices at the expense of the congregation which "the Bet Din ordered";³⁴ and the ordinance that the *lulab* ceremony should be performed by everyone in his own home and not exclusively on the Temple Mount.³⁵

These are only a few examples of interpretation by the Bet Din ha-Gadol, but they are especially important for illustrating the manner in which modification and interpretation of the Halakah were evolved and practiced for the common good and for the religious life of the people. They prove the power of the Bet Din to issue *takkanot* as well as *gezerot*.³⁶

EMERGENCY DECISIONS

The Great Sanhedrin not only rendered decisions on the interpretation of the law but also was empowered to act in cases of emergency: A baraita declares, Rabbi Eliezer says, 'I have a tradition that the court punishes and whips not in accordance with the law,' [i.e., the court has the authority to punish any culprit, though according to the strict law no penalty could be inflicted]. It once happened, in Hellenistic days, that an individual rode on a horse on the Sabbath and he was brought before the Bet Din and stoned. According to the strict law he should not be punished, but the exigencies of the time demanded it.³⁷

Stoning a person for violating the Sabbath by riding a horse—a transgression not mentioned in the Bible, or even deduced therefrom—could not be adjudicated by a smaller court. The ancient law had to be adjudged by a superior court and reinterpreted.³⁸ Only the Bet Din ha-Gadol could deal with it.

SUPERVISION OF OFFICIALS

a. Inauguration

It is important to record the particular relations which existed between the Great Sanhedrin and the king or high priest—the political heads of the state during the Second Temple era. From a passage in the Tosefta it is usually deduced that these dignitaries were appointed by the court.³⁹ But a knowledge of the period of the Second Commonwealth proves that this was not so. There were many instances of accession to the throne or to the priesthood without the sanction of the court and even contrary to its spirit. To declare that appointment by the Bet Din ha-Gadol might have been merely the constitutional right of the court does not solve the problem. One should remember that constitutionally the offices of king and high priest were hereditary: the king to be of Davidic descent and the high priest of the direct lineage of Zadok. The Great Sanhedrin therefore could not choose them even if these heads of the state were amenable to the Bet Din ha-Gadol.

In fact, the entire difficulty of the tannaitic passage concerning the accession of king or high priest lies in the interpretation of the text of the Tosefta. The meaning of **מעמידין** in the text as “appointment” hardly is tenable here. The word as used here refers rather to the installation, when the oath of allegiance was administered to the king and high priest upon their assuming office. The text, therefore, deals with the supervision by the Bet Din of the inaugural ceremonies.

Additional evidence that the text referred to the “installation” might be found in a talmudic explanation: “What is ‘genusiah’?” said Rabbi Judah. “It is the day of installing the king.”⁴⁰ This Greek term also refers to the anniversary of incumbency in office.⁴¹

b. Excommunication

The Great Sanhedrin had the power to excommunicate persons whose violation of any precept might profane the name of God. This is evidenced from the story in Mishnah Ta'anit concerning the activity of Simon ben Shattah: “When Honi the Circle-Maker prayed for rain, Simon ben Shattah sent word to him saying, ‘Thou deservest to be excommunicated.’”⁴² Commenting upon this, the

Gemara reads, "Thereupon Simon ben Shattah sent word to Honi saying, 'Wert thou not Honi, I would order thy excommunication.'" In a parallel passage in the same source, the Talmud discusses the messages sent by the *Bene Lishkat ha-Gazit*.^{42a} A comparison of the readings indicates that Simon ben Shattah was the person who had dealings with Honi and that at that particular time he was identified with the Gazit Chamber. It is assumed that Simon ben Shattah was then the Nasi and acted for the entire body. His name therefore did not refer to his private action; he represented himself only as an official of the court.^{42b}

A similar occurrence of excommunication may be established in connection with Akabiah ben Mahalalel, who refused to retract his personal views and testimonies.⁴³

c. Lower Courts

Another important function of the Bet Din ha-Gadol was that of setting up smaller courts for different sections of the country.⁴⁴ Thus the Great Sanhedrin supervised the entire judiciary system of the Jewish state and served as the crowning head of the whole to strengthen the appellate system and at the same time maintain the Bet Din's supremacy as the religious authority in the state.

d. Appointment of Judges

It was the duty of the Great Sanhedrin to appoint judges for the lower courts.⁴⁵ To implement this the Nasi and his committee undoubtedly sought wise, capable men who already had established reputations in the lower courts, and elevated them to a seat in the Bet Din ha-Gadol.⁴⁶

There is a presumption that in an emergency, when it was necessary to act with a quorum, appointment was made from the group of scholars sitting before the court. These scholars may have been the minor judges in the lower courts, who served also at the plenary session of the Great Sanhedrin.⁴⁷

SPECIAL TRIALS

a. Judging a Tribe or Associate Justice

The Mishnah records that the Great Sanhedrin had sole jurisdiction in the trial of a "tribe."⁴⁸ However, the meaning of the

equivalent Hebrew word *shebet*⁴⁹ and the nature of the particular trial are puzzling factors.

Can we take the word *shebet* literally? We must remember that in the days of the Second Commonwealth there was no division of tribes in Israel. Consequently the Amoraim gave their own definition of "tribe." Rav Matna interpreted it as "prince of a tribe who sinned,"⁵⁰ referring to a crime of a high official. On the other hand, the Amora Rabina interpreted it to refer to "a tribe (or majority thereof) which had become idolatrous."⁵¹ The latter view is based on the biblical text concerning the "beguiled tribe,"⁵² and the opinion here is only academic. From the talmudic declaration that an apostate city never existed,⁵³ it is believed that the term *shebet* could not have applied historically to any particular case.

In the Amoraic discussion it was suggested that the passage could refer only to some interstate problem such as the question of boundary lines. "Judging a tribe" was interpreted as a reference to a conflict of boundaries, such as between Galilee and Judea.⁵⁴

Examining the text, one perceives that the entire array of subjects is a mixture of facts concerning state problems and matters pertaining to individuals. The reading of the passage in Sanhedrin 1.5 is: "A tribe, a false prophet and a high priest are not judged save by a court of 71." One would expect two separate categories in the recording of the law, not an intermingling of laws on tribes or state problems with laws on priests and false prophets. The latter category undoubtedly referred to private individuals. "What is a tribe?" would not be answered by raising all matters to problems of national importance.

It appears that the Talmud took cognizance of this involved question when it ultimately accepted as final Rav Matna's opinion that the term *shebet* referred to a "prince of a tribe."⁵⁵ Perhaps the original reading was *shofet* (שׁופט) instead of *shebet* (שְׁבֵט)^{55a}; and the Mishnah refers to the trial of a *zaken mamré* (recalcitrant elder).

The trial of a "prince" or a judge is another important example of men brought before the Bet Din ha-Gadol for an infraction of

the law, and therefore fits into the passage mentioning other dignitaries such as "priests" and "prophets." The entire section thus stresses the constitutional rights of the Great Sanhedrin and refers to the special cases of individuals brought to trial in matters of national import.⁵⁶

b. False Prophet

The Mishnah records that a false prophet and a high priest were to be judged by the Sanhedrin of seventy-one.⁵⁷ The term "false prophet" no doubt is anachronistic because, according to the Talmud, prophecy did not exist after Haggai, Zechariah, and Malachi.⁵⁸ The law, then, is based merely upon Deuteronomy 13.13 and is set forth as a constitutional right of the ancient Sanhedrin, but not as representing actual practice.⁵⁹ A similar academic notion⁶⁰ pertains to the Sanhedrin's participation in a declaration of war.⁶¹

The Mishnah also records that the high priest could be brought to trial before the Great Sanhedrin.⁶² This may have been for an infraction of law in a religious and ritual ceremony in the Temple. Thus the Mishnah tradition corroborates that which Josephus relates, that "The Pharisees [who undoubtedly were the leaders in the Sanhedrin in his day] had power even over king or high priest."⁶³

Only matters of national importance came under the jurisdiction of the Great Sanhedrin. The Talmud called them "matters of the great" or "difficult things"⁶⁴ and therefore to be judged only by the superior court. Private criminal cases or civil disputes, even involving high officials, were judged only in the smaller courts of twenty-three or three.⁶⁵

c. Rebellious Elder

Though the Great Sanhedrin was generally a final court of appeal, under extraordinary circumstances it served as a trial court, especially when members of the judiciary were concerned.

The Mishnah records that a dissenter or rebellious elder was tried by his own colleagues.⁶⁶ The law is based on Deuteronomy 17.8-13 and refers to a judge who defied the decision of the Sanhedrin, committing thereby an offense punishable by strangulation. He could be found guilty only if he maintained schismatic

opinions and persisted in asserting them.⁶⁷ But before he could be brought to trial, there had to be proof of an act or the intent to act contrary to the majority. Mere expression by word of mouth was not sufficient reason to bring him to trial.

It is reasonable to assume that a pardon was not permitted for a rebellious elder because it might increase schisms in Israel.^{67a} Nevertheless, from the story of Akabiah ben Mahalalel who was asked to recant, one may hold an opposite view. The Great Sanhedrin tried such cases only to enhance its own prestige and to strengthen the decisions of the body. Therefore the Mishnah declares that an elder cannot be judged as rebellious except by the court of seventy-one.⁶⁸

Only a member of the Great Sanhedrin could be tried for dissension. A member of a lower court could not be brought to trial. This is evident from the passage: "For a decision contrary to the Bet Din ha-Gadol in Jerusalem is one liable to death, but one does not receive the death punishment for a decision of the court of Jabneh."⁶⁹

Since the death penalty was not applied in Jabneh,⁷⁰ the foregoing statement might have been included by the Tannaim because of the controversies between Rabban Gamaliel II and Rabbi Joshua.⁷¹ Its purpose was to show that Rabbi Joshua was not in the category of a rebellious elder. Similarly the case of Rabbi Eliezer ben Hyrcanus, whose excommunication was due to his rebelliousness, was not to be construed as an instance of a recalcitrant elder in Jabneh.⁷² However, one should not lose sight of the fact that in the days of the Great Sanhedrin in Jerusalem trial of a *zaken mamré* may have been held. The instance of Akabiah ben Mahalalel is again a case in point.⁷³

The passage, "They do not kill him in the Bet Din of his city and not in the Bet Din of Jabneh but he is brought up to the Bet Din ha-Gadol in Jerusalem,"⁷⁴ likewise may be evidence that the law was enforced in the days of the Temple. The emphasis in the record was that the law did not apply to members of local courts of other cities even during the period of the Second Temple. It is also probable that this passage, as taught in the later Academy of Jabneh, definitely fixed the abolition of the law of *zaken mamré*,

since there was no longer any court in Jerusalem after 70 C.E. The name "Jabneh" therefore was stressed in the passage to show that the practice was discontinued even in that court which virtually succeeded the Bet Din ha-Gadol of Jerusalem. This view is interesting because it coincides with the unequivocal tradition:⁷⁵ "A rebellious elder is killed only in the time of the Temple."⁷⁶

CALENDAR SUPERVISION

One of the most important functions of the Great Sanhedrin was the intercalation of the month,⁷⁷ that is, to calculate the exact time for observing the holidays. The fulfillment of many traditional practices, as on Passover or on the Day of Atonement, depended upon such calendar reckoning.

Evidence of the practice of the intercalation of the month during Temple days is found in the Mishnah: "Before, they used to admit evidence about the new moon through the day. Once, the witnesses tarried so long in coming that the Levites (in the Temple) were disordered in their singing. It was ordained then that evidence could be admitted only until the afternoon offering. Then this day and also the morrow were declared days of the New Moon."⁷⁸

An implication that the supervision of this function belonged to the head of the Great Sanhedrin lies in the following passage: "There was a large courtyard in Jerusalem called Bet Yaazek where all witnesses assembled and where the Bet Din examined them. . . . At first they could not stir the whole day (of Sabbath from the courtyard) but Rabban Gamaliel the Elder ordained that they might walk within two thousand cubits in any direction."⁷⁹ This Mishnah expressly mentions Rabban Gamaliel the Elder. It is known that he served as Nasi of the Sanhedrin about 50 C.E.⁸⁰

In this connection another Mishnah must be examined: "Rabbi Jose said, 'Once Tobiah, the physician, saw the new moon in Jerusalem together with his son and his freed slave. The priests accepted him and his son but pronounced his freed slave ineligible. When they came before the Bet Din they accepted him and his slave, but declared his son not eligible.'"⁸¹

At first glance this incident portrays a discrepancy between the priests in the Temple and the members of the court. If the inter-

calation of the month was in the hands of the Nasi and if we are to accept at face value the activity of Rabban Gamaliel the Elder, then what was the power or interest of the priests?

To solve this problem it is necessary to preface the entire theme of intercalation by recognizing that there were two elements of procedure: (1) the establishment of the eligibility of the witnesses, and (2) the actual declaration of the intercalation of the month. Though the Great Sanhedrin announced the New Moon, the determination of the worthiness of the witnesses may have been made by another qualified group in accordance with the caste system of the time. Thus in Temple days the priests, because of their tendencies and leanings toward aristocracy, disqualified the slave, declaring him ineligible for testimony. The Bet Din ha-Gadol, however, had ultimate jurisdiction, and later accepted the slave's testimony.^{81a} A similar situation arose in Rabbi Akiba's time. Witnesses were detained by him in Lud, though the actual declaration of the New Moon was announced by the Nasi, Rabban Gamaliel II in Jabneh, who upbraided Rabbi Akiba for detaining the witnesses.^{81b}

The intercalation of the month was decided by three judges. This number presumably constituted a committee which heard the testimony of witnesses.⁸² Official sanction, however, had to be rendered by the Nasi after these preliminary deliberations. When matters of extreme importance came before the court, the Nasi, in all likelihood, made a personal appearance in the committee and presided as its head. A graphic picture of this ancient system may be found in the brief statement: "The Head (*Rosh*) of the Bet Din says, 'It is hallowed' and all the people answer after him, 'It is hallowed.'"⁸³

After 70 C.E., with the dissolution of the Sanhedrin, an attempt was made to consider the Nasi's presence only as secondary. This is explained by Rabbi Joshua ben Karha:⁸⁴ "Rabban Johanan ben Zakkai ordained this also that, wheresoever the *Rosh Bet Din* may be, witnesses would go only to the place of assembly."⁸⁵ Nevertheless there is doubt that Rabban Johanan's recommendation was accepted. One is inclined to believe that the Nasi's presence was always deemed necessary when matters of intercalation.

tion were under discussion, for a baraita emphasizes: "The intercalation of the month cannot be consummated unless by the consent of the Nasi."⁸⁶

TEMPLE SUPERVISION

a. Special Services

It was within the power of the Sanhedrin to direct special ceremonies in addition to the major activity of appeal, interpretation of the law and the intercalation of the month. The Bet Din ha-Gadol supervised the offering of the Red Heifer,⁸⁷ the *Sotah* ordeal,⁸⁸ the breaking of a heifer's neck (*eglah arufah*)⁸⁹ and the services of the Day of Atonement.⁹⁰ The procedure in these cases was part of general Jewish ritual, despite their priestly features, since questions of Halakah were involved in them.^{90a} The priests only performed and carried out the ceremonials of the law according to the dictates of the Sanhedrin.^{90b}

b. Additions to the City and Temple

The Mishnah notes, among the functions of the Great Sanhedrin, the granting of permission to enlarge the courts of the Temple or of the city.⁹¹ Only the superior court could allow structural changes in Jerusalem, particularly because the sanctity of the city and its environs affected the observance of the rituals in the life of the priests and the people. The bringing of tithes and the adherence to the laws of purity⁹² in the Holy City may be cited as examples.

Pertinent to this is the historic notice that Jonathan (the Hasmonean) gathered the "elders of the people" together in the Temple for approval to build in the city.^{92a} Since there was as yet no Sanhedrin organized then, the people's sanction was necessary.^{92b} The real purpose, however, was martial and political—"... to build fortifications in Judea . . . and to separate it (the citadel) from the city, so as to isolate it."

Likewise, the incident told by Josephus⁹³ of Agrippa II's building above the Temple merits clarification. It is recorded that the priests demurred against Agrippa's action; but there is no proof here that the Sanhedrin lacked the power to overrule Agrippa. In all probability, this and many other cases recorded by Josephus re-

flect the political situation at the time. Agrippa had control over the Temple and wished to exercise his right by building an extension. The priests protested on the ground that he overstepped his right by watching the ceremonies and perhaps thereby seeking ultimately to exercise some control over their services. Their claim on this point was justifiable. It was not in Agrippa's province to interfere in religious matters. His position as governor confined him to matters of state, to Roman law and order. His action touching upon the religious significance of Jerusalem surely would not have been sanctioned by the Sanhedrin. Thus the story by Josephus does not controvert the mishnic tradition on the regulations by the Great Sanhedrin of Temple construction, which Agrippa II sought to overrule.⁹⁴

c. Priesthood

Josephus also relates that Agrippa II assembled a *synedrion* and, together with the decision (suffrage) of those who came into it, granted the Levites and singers of hymns permission to wear linen garments like the priests.⁹⁵

It is most difficult to understand this granting of permission. What sort of a body was it that sanctioned it? Josephus relates that "all this was contrary to the paternal laws of our country." One infers from his statement that the session convened by Agrippa was an extraordinary one and not the regular Great Sanhedrin.

Agrippa's act probably was an attempt to raise the social level of the Levites.⁹⁶ Josephus himself felt that this move was contrary to the laws of the country [the Halakah] and would put in jeopardy the superiority of the priesthood; for he recognized and personally favored priestly aristocracy in which was found the basis of theocracy.^{96a} Agrippa's action was therefore not in accordance with traditional practice, approved neither by the Sanhedrin nor by the priests.⁹⁷

It was also the duty of the Bet Din in the Gazit Chamber to render decisions on the qualifications of the priests, controlling thereby the purity of the Temple and its ritual. Thus in the words of the Mishnah, "In the Gazit Chamber, the Great Sanhedrin of Israel used to sit and judge the priesthood. . ."⁹⁸ Its particular

purpose was to determine whether one was a true priest, according to the law of the Bible.

There is no doubt that the records of the priesthood were kept in the court archives where all qualifications could be checked and verified. Josephus said: "This is our practice not only in Judea but wheresoever any body of men of our nation do live, and even there an exact catalogue of our priests' marriages are kept . . . for they send to Jerusalem the ancient names of their parents in writings. . . ."⁹⁹

The reference by Josephus to "Jerusalem" may have indicated not merely the *Bet Din shel kohanim* but the *Lishkat ha-Gazit* as well; and hence is essentially like the reports in the Mishnah.

That the *Lishkat ha-Gazit* was the source of Jewish law and the jealous caretaker of tradition and ritual is summed up in the declaration of a baraita, "Justice, justice shalt thou pursue . . . go after the sages (*hakamim*) in the Gazit Chamber."¹⁰⁰ The Tosefta also laid particular stress on the importance of this Chamber and the scope of its functions by declaring: "Rendering decisions of law is of greater importance than trial of capital punishment. Decisions of law were rendered only in the *Bet Din ha-Gadol* of the Gazit Chamber, whereas capital punishment trials could be conducted in any locality."¹⁰¹

CHAPTER XI

JUDICIAL PROCEDURE

Most of the information pertaining to the judicial procedure of the Great Sanhedrin is gleaned from rabbinic sources. But it is necessary to ascertain whether this procedure was followed by the Sanhedrin in the period of the Second Temple, or in Jabneh and later academies.¹ The question also arises whether the rabbinic sources point to trial courts of twenty-three — for a multiple of details in procedure pertain to trials held in local courts — or to the Great Sanhedrin itself. According to tradition, the arrangement in the lower courts followed the practice in the higher court, and singular procedure was necessary only in unusual cases. It appears that the procedure followed in Jabneh after the destruction of the Temple was modeled in many instances upon that in the Gazit Chamber. The Great Sanhedrin was the established legislative and interpretative body; therefore the method and procedure in the Gazit Chamber for determining the law became the prototype to be followed in the later schools of Jabneh.

A great deal already has been written on the procedure, modes of punishment and related subjects.² The purpose of this chapter is not to discuss rules of evidence, ways of testimonies, indictable persons, trial methods, argumentation, or administrative law. The criminal jurisprudence of the Jews is treated here only insofar as it reflects the development of the judiciary system and the activities of the Great Sanhedrin in an historical perspective.

QUORUM

The quorum in the Chamber was twenty-three. If a member wished to leave the court he had to ascertain first whether twenty-three remained in the Chamber.³ Now if the basic number in the Great Sanhedrin was twenty-three and if a combination of three courts or a plenary session comprised the number of seventy-one,

it may be safe to assume that in cases such as the installation of a king or the trial of high officials there was a combined meeting of all members. We come to this conclusion from our examination in the previous chapter of the different functions of the Great Sanhedrin.⁴

SESSIONS

The Bet Din sat in daily session in the Gazit Chamber from the time of the morning sacrifice until the afternoon offering, except on the Sabbath and holy days. In the early morning the Chamber was occupied by the priests when they cast lots to ascertain their individual participation in the service.⁵ After that the Sanhedrin occupied it, till the afternoon offering. Here also the assemblage recited⁶ the Shema and the Ten Commandments, designating perhaps the official opening prayer of the Sanhedrin and of the priests before the day's service began.

Trials were not held on the eve of the Sabbath or on the eve of a festival day.⁷ Before any verdict of guilt could be declared and sentence imposed, the Court had to recess until the following day in order to re-examine the evidence. Every precaution was taken to avert hurried judgment in taking a person's life. It was felt that if the following day was the Sabbath, the long recess would be a harsh delay for the accused who might be innocent. Hence there was no session on the eve of the Sabbath. Acquittal or exoneration, however, could be announced on the same day of the trial. Herod's case, as narrated by Josephus,⁸ corroborates the traditional mode of sentence pronounced on the following day. On the Sabbath and holidays the members usually convened for study in the schoolhouse on the Temple Mount.⁹

PRECEDENT AND TRADITION

It was pointed out in an earlier chapter that the Great Sanhedrin dealt with appeals from lower courts. The procedure in such cases was that the Mufla,¹⁰ or deputy of the lower courts, came before the Bet Din ha-Gadol and applied for the tradition or decision;¹¹ the litigants themselves did not present their claims.

The first step in an appeal was the search for tradition. Thus,

if the petitioners had a "tradition" on any question which they submitted to the court, they presented that, too.¹² This is well illustrated by the Passover incident of Hillel with the Bene Bathya. The sage tried to explain the laws of slaughtering on the Sabbath by the midrashic norms or hermeneutic principles.¹³ At first this method was not accepted because it was presumed to be an innovation; but when Hillel showed that he had a "tradition" his opinion was accepted. The Mishnah records other instances of rabbis seeking halakic tradition or decisions by coming before the Sanhedrin in the Gazit Chamber.¹⁴

Questions of law which had to be decided by the Great Sanhedrin were discussed minutely; each point of evidence was acted upon separately.¹⁵ The disciples were permitted to enter into the discussions, but they had no official voice or voting power.¹⁶ This may have been a remnant of the old custom in which the elders participated in public discussions of the (*edah*) congregation. Only official members of the court cast the final, decisive vote.

Records of precedents and acts of the courts were kept in archives. The *prosbul* is an example of some of the documents placed before the courts.¹⁷ If no "tradition" or precedent existed, a vote was taken in the manner just described; the majority vote created the law. Thus all new law and its interpretation came from the Gazit Chamber.¹⁸

ISSUANCE OF DECREES

As a rule, decrees were issued in the name of the Nasi, the head of the entire judicial system and the leader of the majority faction. Hence all documents and decrees were made official with his approval. This may be established from the fact that, as Nasi, Hillel issued such decrees as the *prosbul*. It was not in the province of the Ab Bet Din, or minority leader, to issue a decree. On this basis we can understand why Shammai said on one occasion: "Were the time propitious (that is, were I to be in the majority), I would decree . . . the prohibition of planting in a field that is cleared."¹⁹ Shammai, as Ab Bet Din, was helpless and could not act against the decree of the majority in the Bet Din.

Similarly, an examination of the testimonies of the first of the Zugot shows that they were proclaimed by the Nasi,²⁰ not by the Ab Bet Din. Thus, when the Talmud recorded decrees issued in the name of the Nasi, they are to be recognized as verdicts of the entire court. The Nasi's name, instead of the more official term "Gazit Chamber," is but an aid in establishing the exact date of any enactment of the Great Sanhedrin.^{20a}

CHAPTER XII

DISSOLUTION OF THE GREAT SANHEDRIN¹

SCHOLARLY OPINIONS

Scholars have come to various conclusions concerning the last days of the Great Sanhedrin. Some regarded the cessation of the body to have occurred with the arrival of Gabinius in 57 B.C.E., when he established his own *synedria*.² Others held that it resulted from Herod's domination of the state.³ Still others believed that it occurred in 6 C.E., with the establishment of the procuratorship.⁴ But most scholars maintained that it occurred about 30 C.E.,⁵ basing their conclusion on the talmudic statement:⁶ "Forty years before the destruction of the Temple the Sanhedrin removed itself to the *Hanut*."⁷ Graetz believed that the exact date for the Sanhedrin's end was 44 C.E., upon the death of Agrippa I, when the second series of procurators took over the rule of Palestine.⁸

More intensive study disproves the above suggestions. On the arrival of Gabinius and the procurators — either the first series beginning in 6 C.E. or the second series in 44 C.E. — there was a change only in the political administration of the state. The religious jurisdiction held by the Great Sanhedrin was untouched.⁹ The Gospels, too, point this out in Pilate's statement concerning Jesus: "Take him and judge him according to *your law*,"¹⁰ proving that Jewish courts still existed in 33 C.E.

The Talmud and Josephus provide evidence on the functioning of the Great Sanhedrin and the exercise of capital punishment until the last years of Jerusalem. Thus the Mishnah records the testimony of Rabbi Eliezer ben Zadok who saw an adulterous daughter of a priest burned at the stake a few years before the destruction of the Temple.¹¹ Similarly, Johanan ben Zakkai cross-examined witnesses even as to the stalks of figs near the scene of a crime.¹² Josephus' statement concerning the dominance of

the Pharisees in the exercise of the law,¹⁸ an opinion which is in conformity with the tannaitic records,^{18a} may be considered as further proof of the Sanhedrin's power until a few years prior to 70 C.E. The fact that the Romans acquiesced in the punishment of Gentile trespassers at the Temple, as shown on the inscriptions still extant today,^{18b} might also be evidence of the retention by the Jews of their capital jurisdiction till the very end of the Temple period.^{18c}

Though actual cases of capital punishment prove only the exercise of this right in the lower trial courts or of Jewish law allowing lynching in exceptional cases,^{18d} there is definite proof that the Great Sanhedrin itself, which supervised the judiciary system, functioned in interpreting the Halakah until the beginning of the War:

1. The Mishnah, recording the activity of Rabban Gamaliel, notes that he came with Simon of Mizpah to inquire about a certain law in the Gazit Chamber.¹⁴ The men undoubtedly appeared before the scribe of the court of Rabban Gamaliel the Elder, who was the head of the Bet Din ha-Gadol about 50 C.E.^{14a}

2. Rabbi Zadok also appeared there a few years before 70 C.E. to inquire about laws of purity.

3. Rabban Johanan ben Zakkai abolished the biblical ceremony of breaking a heifer's neck¹⁵ (*eglah arufah*) as atonement for the innocent blood of one slain near a city.¹⁶ The ceremony, no doubt, was abolished after 62 C.E., in the time of the disturbance of Felix and Eliezer ben Denai.¹⁷ That period was known to be the decade of murder and evil and, as recorded in the Mishnah, Rabban Johanan ben Zakkai abolished the ceremony because of the abundance of bloodshed, regarding it as futile and non-essential in those tumultuous times. Likewise, with adultery widespread, the sage abolished the practice of giving "bitter waters" to a suspected adulteress, lest the ceremony become a mockery.¹⁸

These ceremonies were held under the supervision of the Great Sanhedrin and, accepting the mishnic report on Rabban Johanan ben Zakkai's concern in them, there is every reason to fix the time element as a period when the Great Sanhedrin still existed. Were this tribunal not functioning, there would have been no point

to Rabban Johanan ben Zakkai's act of abolition, since these rituals could be performed only under the direction of the Great Sanhedrin. All proof therefore leads to the conclusion that the Great Sanhedrin functioned in Jerusalem until the beginning of hostilities in the Revolt against Rome.

THE EXACT DATE

The exact date when the Great Sanhedrin was dissolved may be set as 66 C.E. — four years before the destruction of the Temple.¹⁹ The talmudic reading **ארבעים שנה** (forty years) might have been a copyist's error or perhaps even a discreet change to emphasize the fact that the Jewish Sanhedrin had no participation in Jesus' trial, in 33 C.E.^{19a} The original reading may have been **ארבע שנים** (four years) and the exact writing in the text might have been **ארבע' שנ'** thereby creating ambiguity; for **ארבע'** might mean **ארבע** or **ארבעים**. Since "forty" was always a popular number, it resulted in being accepted as more authentic, though without historic basis.^{18b}

An examination of the sources shows that the Palestinian Talmud reads: "Capital punishment was abolished forty years previous to the destruction of the Temple."²⁰ On the other hand, the Babylonian Talmud declares: "Forty years before the destruction of the Temple, the Sanhedrin removed itself to the *Hanut*."²¹ There is a strong assumption that the two sources refer to the same event, though the "abolition of capital punishment" is stressed in the Palestinian Talmud and the "removal of the Sanhedrin" is emphasized in the Babylonian Talmud. The "place" (*Lishkat-ha-Gazit*) — or the proximity to the altar of the Temple — was the determining factor for formal judicial activity.²² Thus, in commenting on Exodus 21.1: "Now these are the ordinances which thou shalt set before them," and also on v. 14: "Thou shalt take him from Mine altar that he may die," the *Mekilta* of Rabbi Ishmael remarks,^{22a} "The Sanhedrin is close to the altar," i.e., the exercise of justice and capital punishment continued as long as there was the altar.^{22b} When the political difficulties in 66 C.E. brought about the cessation of the daily sacrifices offered in the name of Rome, it was an open declaration of revolt.^{22c} But until

this beginning of hostilities the Great Sanhedrin was in the Gazit Chamber, near the altar.

There also is a basis for assuming that the talmudic statement: "From the day the Temple was destroyed, although the Sanhedrin was abolished, the four modes of execution were not abolished" correlates the destruction of the Temple with the abolition of the Sanhedrin.²³ On the other hand, opinion that the "four modes of execution" continued even *after* the destruction of the Temple, seems to be contrary to the Palestinian tradition that capital punishment was abolished forty years *before* the destruction.^{23a}

Only if we accept the reading to be אַרְבָּע (four) do all sources agree: in 66 C.E. the Sanhedrin was abolished and with it the exercise of capital punishment for religious infractions.^{23b} The Talmud explains that the "four modes of execution" continued by heavenly agency; these methods were not practiced by any Jewish court because the Sanhedrin did not exist any more.²⁴ In other words, the "principle" of the four modes of execution was maintained even after the destruction,^{24a} though the traditional institution for administering justice and punishment was already defunct.

CORROBORATION FROM HISTORIC EVENTS

The time for the dissolution of the Great Sanhedrin, determined here to be four years before the destruction of the Temple, is consistent with other traditions on the last years of Jerusalem: (1) It is recorded that forty years before the destruction the lot cast up on the bullock of the Day of Atonement did not appear as usual upon the right side²⁵ and (2) the portals of the *Hekal* (Temple) opened of themselves until Rabban Johanan ben Zakkai admonished them saying, "Hekal, Hekal, wherefore dost thou hasten? I know that your end will be destruction."^{25a}

These homiletical expressions, with legendary background, were symbols of the expected doom. If, here too, we read "four" instead of "forty," the words of Rabban Johanan ben Zakkai are of real significance in setting the time of the disturbances on the Temple Mount. Josephus records a similar episode for 66 C.E., and his testimony²⁶ is parallel with that of the Talmud.

The upheaval beginning in 66 C.E. led to the dissolution of the halakic Sanhedrin.^{26a} The Court found it impossible to convene in peace, particularly with the Revolt encompassing the Temple Mount. The Great Sanhedrin therefore dissolved with the ending of the established government.^{26b} The provisional government, as set up later, had no special halakic Sanhedrin. The Zealots, who thereafter introduced their own new government, assembled a special court in the Temple, sentencing and executing a man for treason.^{26c} But this body was of their own creation and not the traditional Bet Din ha-Gadol devoted to the Halakah.

The tradition²⁷ that "with the abolition of the Sanhedrin song ceased at feasts" also corroborates the view that the last days of the Great Sanhedrin were in the times of strain and stress. The disturbances of 66 C.E. brought national disaster and caused the end of the Bet Din ha-Gadol. But later generations never forgot this institution. Reverentially, though homiletically, they applied to it biblical phrases of exaltation: Genesis 40.10 — "As it was budding, its blossoms shot forth,"^{27a} or interpreting Canticles 7.3: "'Thy navel is like a round goblet' — this is the Sanhedrin, because it sat at the central point of the Jewish world."^{27b}

* * *

This investigation has sought to illumine the picture of the Great Sanhedrin as the Supreme Court which devoted its exclusive attention to the interpretation of the Bible and the way of life (Halakah) for the Jewish people.²⁸ As a democratic and specialized "Torah-legislative" body, it was founded with the Hasmonean Commonwealth in 141 B.C.E., and existed with majority and minority opinions, headed respectively by Nasi and Ab Bet Din. It sat in the Gazit (Decision)²⁹ Chamber of the Temple till 66 C.E., and had tremendous influence on the development of ancient Jewish law. As the fountainhead of Jewish thought and practice, this Bet Din ha-Gadol has always been remembered, from the ancient days of the Second Jewish Commonwealth until the modern times of the new State of Israel, as the inspiration to the maintenance of Jewish tradition.³⁰ This is evident in the daily Amidah prayer in the Jewish liturgy: "Restore our judges as at first, and our counsellors as at the beginning."³¹

THE GREAT SANHEDRIN

Part II

EXCURSUSES



THE GREAT SANHEDRIN

PART II

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EXCURSUS I

ATTEMPTS AT A SOLUTION OF THE SANHEDRIN PROBLEM

The problem of the Sanhedrin is so complex, and the scholarly discussions of it so numerous and scattered, that I thought it would be helpful to summarize here the various attempts previously made to reach a solution.

A scholarly review of the many early opinions held on the subject of the Great Sanhedrin may be found in A. Kuenen's work, first published in 1866.¹ He records that among Christian scholars who held that the high priest was the head of the Sanhedrin were Meuschen, Bucherus, Hartmann, Winer and Keil, who were opposed in this opinion by Selden, Reland, Corpzov, De Witte, Saalschutz and Leyrer. Among Jewish scholars, on the other hand, upholding the view that the Zugot (and not the high priests) were the heads in the Sanhedrin, were Zunz,² Sachs,³ Herzfeld⁴ and Graetz.⁵ But to obviate any difficulties in the sources, Z. Frankel⁶ first suggested that the Nasi was the presiding officer; the Ab Bet Din, the head in civil cases; and a Hakam directed religious matters.

J. Jost believed that a Sanhedrin of learned scribes with vast powers, as described in the Mishnah, could not have existed in the tumultuous times of the Second Commonwealth.⁷ Indeed, he regarded all rabbinic sources as theoretical data. A. Geiger supported this position and added that only the high priest (and not a learned rabbi) could have been the head of the Sanhedrin in the Second Temple era.⁸

A. Kuenen, mentioned above, followed Geiger by maintaining that the Greek sources presented the more reliable facts. He contended that the Sanhedrin described in the Mishnah was simply a retrojection of the Academy of Jabneh into the days of the Second

Temple: "Ihre Auffassung von der Vergangenheit wird völlig beherrscht durch die Gegenwart. Sie beschreiben das Sanhedrin ungefar so, wie in 3 Jahrhundert N. Chr. und später bestand oder lieber bestanded haben wurden wenn es damals nicht blass eine jüdische Gemeinde, sondern auch einen jüdischen Staat gegenben hatte."⁹

Kuenen's opinion was accepted by S. Wellhausen who arrived at the same conclusion through his study of the Pharisaic and Sadducean conflicts in the period of the Second Commonwealth.¹⁰ It was perfected by E. Schürer, who declared: "In accordance with the analogy of the later Rabbinical courts of justice, Jewish tradition conceives of the supreme Sanhedrin as having been merely a collegiate body composed of scribes. This is what, down to the time of the destruction of Jerusalem, it certainly never was. On the contrary, it is certain, from the concurrent testimony of Josephus and the New Testament, that, till the very last, the head of the sacerdotal aristocracy continued to preside over the Sanhedrin."¹¹

I. Loeb, in an analysis of the first chapter of Abot, also supported the "projection" theory.¹² He regarded the Zugot as fictional, asserting that it was customary for the rabbis to "pair" scholars, as well as to set them up in a triumvirate — Eshkolot.¹³ According to him, the chain of tradition in Abot and the information on the Sanhedrin are but late rabbinic dicta, assembled primarily to raise the prestige of the rabbis.

This notion became the prevailing view to which many subscribe even to this day. Thus Morton S. Enslin writes: "To what extent are we justified in assuming that the Mishna tract Sanhedrin gives a reliable picture of the make-up, organization, authority and procedure of the Sanhedrin during the days of the actual authority? To what extent does it simply reflect the Bet Din at Jamnia, a learned school of scholars which firmly believed itself to be a continuation of the Sanhedrin . . . but which was in actuality simply a court deprived of all legislative power . . . and so perfectly free to develop in the fullest and most exemplary detail a type of procedure which while admirable on paper was not calculated to function?"¹⁴

These conclusions based on non-rabbinic sources were already disputed by Isaac Halevy many years ago. He sought through his interpretations to raise all talmudic assertions to historical value.¹⁵ Later, Zev Yawitz¹⁶ and David Hoffmann¹⁷ followed his method in portraying the Great Sanhedrin as the council of the Jewish state and as the highest court empowered to interpret the law in the Gazit Chamber of the Temple. Hoffmann also sought to prove from rabbinic and non-rabbinic sources that the high priest was the political head (*archon*) and the Pharisaic Nasi was the religious head¹⁸

I. Jelski¹⁹ followed in the attempt to reconcile the conflicts. Like his predecessors, he viewed the Sanhedrin as the all-empowered tribunal of the state. He too declared that the mishnaic assertion about the Zugot being the heads of the Sanhedrin was an opinion concocted by the later rabbis, the Tannaim. Nevertheless he believed that there were two leaders in the Sanhedrin: the political head who was the high priest and was called Nasi, and the religious head, known as Ab Bet Din. According to Jelski, Josephus, who wrote primarily for a Roman audience, took little heed of inherent religious details, since he devoted his interest to general points of state politics. The Talmud, on the contrary, interested in religious points of view, recorded those references bearing on religious subjects. The work of the Ab Bet Din, the religious head, was described by the Talmud, and the activity of the high priest, the political leader, was pictured by Josephus. In all the references, nonetheless, it is the same Sanhedrin.

M. L. Lilienblum, on the other hand, suggested that the Nasi was the religious leader and the Ab Bet Din the political head. The Semikah controversy or the question of ordination of added members into the Sanhedrin thus pertained to the struggle of religious versus political groups in the Sanhedrin.^{19a}

S. Rappaport regarded the position of Ab Bet Din as one dealing with civil cases only.^{19b} J. E. Löwn believed that the Ab Bet Din dealt only with such ritual matters as prayer.^{19c}

Such a reconciled view of different leaders — political and religious — in the Sanhedrin also was maintained, with modifications, by I. H. Weiss,²⁰ F. Blum,²¹ S. Dubnow,²² and A. Gulak.²³

D. Chwolson suggested that the talmudic sources mentioned the Zugot as heads only of a particular judicial committee, one of many in the Sanhedrin.²⁴ J. Klausner²⁵ went on to theorize that these committee-heads of scribes came to be regarded erroneously by the Talmud as the officials of the entire body that was really governed by the high priest.

A. Büchler went a step further.²⁶ Instead of two chief judges or different committees in the same institution, he believed in the existence of two bodies. In his opinion the talmudic sources pictured only the Bet Din ha-Gadol, the highest religious council which convened in the Gazit Chamber. This body supervised the Temple cult and religious law, and was composed of Pharisaic experts in the law, headed by a scribe. Josephus and the Gospels, instead, portrayed a political institution, the supreme council of Jerusalem, composed of chief priests and members of the nobility and priestly families, presided over by the high priest. This council served as the executive and political institution of the state with the status of a superior court empowered to deal with criminal cases.

Büchler's theory of two institutions was accepted in its entirety by Israel Abrahams²⁷ and rejected by E. Schürer²⁸ and G. A. Smith.²⁹

S. Schreier,³⁰ in his attempt at reconciliation, held that the Sanhedrin was not a permanent body, but one which was assembled whenever necessary.³¹ It was originally a court of priests, consisting of twenty-three members and was called gerousia. Later the rabbinic sage, Jose ben Joezer, headed a lay group, the Eshkolot party in the government, but this party dissolved with the rise of the Hasmoneans to priestly-monarchical grandeur. In the days of Hyrcanus I the Zugot were established.³² They were the heads of the Bet Din of the Pharisees. Thus a plenary Sanhedrin emerged to consist of: (1) a court of priests, (2) a tribunal of elders and (3) a Bet Din of Pharisees. Each individual body consisted of twenty-three members. Together with the high priest, the Nasi, and an Ab Bet Din, these courts formed a body of seventy members and therefore the name "synedrion" (sitting together) was adopted. Only the Bet Din of Pharisees, however, is remem-

bered in tradition because it was concerned with law and life. The other bodies dissolved with the destruction of the Jewish state.

J. L. Katzenelson⁸³ explained the mishnaic tradition by suggesting that there were three Sanhedrins: (1) A Great Sanhedrin of seventy-one, headed by the high priest, concerned itself with the various functions of the state, — political, religious, judicial and legislative-interpretive. Only a distinguished section of the court sat in the Gazit Chamber. (2) A Sanhedrin of twenty-three near the Temple Mount devoted itself to intercalating the month, to judging common capital cases and also to studying and interpreting the law. There were two heads: the Nasi, who had supervision over the interpretation of the law and the issuance of decrees, and the Ab Bet Din, who presided over trials. (3) Another court of twenty-three, a Bet Din of priests, was concerned with the priestly ritual.

S. Zeitlin⁸⁴ also came to the conclusion that there were two types of Sanhedrin during the Second Commonwealth period: the mishnaic Sanhedrin, a religious body legally constituted and supported by its branches, which dealt with transgressors of Jewish law and summoned them for trial; and a state *synedrion*, mentioned in the non-rabbinic sources, which was convened by the ruler of the state at any time he deemed it necessary to try political offenders. This view was reached from an intensive study of the texts and style of Josephus and the Gospels, contrasting these with the meaning of similar terms in the Mishnah.

S. Krauss⁸⁵ adhered to the earlier idea of one supreme court. He concluded that the rabbis, while giving preference to the scribes, knew that there were priests in the Sanhedrin, just as Josephus, a priest, attributing importance to the priests, knew that there were scribes. The lack of complete information on the Sanhedrin, both in its make-up and in its operation, is due, then, to a measure of silence on the part of a biased source which did not speak openly of a rival group.

Z. Taubes⁸⁶ tried to solve the problem of the Sanhedrin through an analysis of the struggles of the Pharisaic and Sadducean groups. He did not accept the view of two Sanhedrins, but held that one council existed, which changed with political events and circum-

stances. Like Jelski, he denied that there ever were Zugot. His surmise was that the Nesi'im, the heads of the Sanhedrin, were individuals who alternated in the position. During the period of the Roman procurators, the Sadducean high priest was the Nasi; at other times, the Pharisaic Nasi had full power. It was his contention that the Talmud pictured the events only from the Pharisaic angle, whereas Josephus and the Gospels portrayed the Sadducean point of view.⁸⁷

The many differences of opinion on the identity and the nature of the body often were due to the interpretations given by the scholars to various names or synonyms for "council" as used in the Jewish and Greek sources. These names include *gerousia*, *boule*, *synedrion*, *synagogue* and others. J. Z. Lauterbach suggested that "synedrion" mentioned in Greek sources referred to the political senate, whereas "Sanhedrin" in the Mishnah meant the religious institution.⁸⁸ In his judgment, the term "boule" was synonymous with "Sanhedrin" and not, as Büchler thought, a city council. Houtsma^{88a} contended that "gerousia" and "boule" described the political body, whereas "Sanhedrin" represented the religious institution.

George Foot Moore⁸⁹ quoted Louis Ginzberg^{89a} that "long before the establishment of the Academy at Jabneh, the Pharisees must have stood at the head of some authoritative body which had the power to regulate civil and domestic laws. . . . The rabbinic tradition about the old Sanhedrin seemed to contain good historical kernel. The matter is not as simple as Kuenen and Wellhausen thought it." Moore maintained that the Great Sanhedrin was a religious court which developed from the earlier gerousia. It was the same body but with the Greek name *synedrion*, "which in the language of the time had come to mean 'court' rather than 'council.'"^{89b} His opinion was accepted by H. Zucker⁴⁰ who further pointed out that any political body existing at the time of this religious court, such as the council under the Herodian monarchy or under the jurisdiction of the high priest, was modeled after the pattern of Hellenistic administration.

E. Bickermann asserted that the Greek sources use *synedrion* in the sense of king's council, corresponding to the *concilium* of the

Roman emperors and prefects — a company of notables which convened at the emperor's invitation to advise and help decide on current problems. This council had no connection with the Sanhedrin of Pharisaic scholars mentioned in talmudic sources.⁴¹

H. Albeck⁴² regarded the Nasi as a spiritual leader whose office was not related to the Sanhedrin. He was engaged in communal affairs and therefore could not be present at every session of the Court. Hence an Ab Bet Din acted as the head. Every leader of a Bet Din was known as Ab Bet Din. The title was not held exclusively by the vice-president of the Sanhedrin. The Nasi had his private Bet Din which ordained the "new month" and regulated other matters. The different *takkanot* or rules promulgated in the name of the Nasi were from his own private court. Indeed, the high priest should have been the Nasi, but since the days of the Hasmoneans spiritual leadership was left to a Pharisee. In Josephus, however, "synedrion" meant the high priest's council.

S. Belkin⁴³ believed that Philo knew of a dual leadership in the Sanhedrin because he uses the term *ethnarchos* (which is the equivalent of Nasi) and also *hegemon* (the leader of the Sanhedrin). Since, according to Philo, the Sanhedrin was priestly in composition, another priest, (not the high priest) was the head of the Sanhedrin. This suggestion however may apply to the period of the early Zugot, if we recognize that they were priests. It cannot refer to the Sanhedrin in the time of Philo or of Josephus because a member of the House of Hillel, and not a priest, was head of the halakic Bet Din then. Philo's view is only a biblical rendition.

S. K. Mirsky^{42a} suggested that the Nasi and Ab Bet Din were the leaders of the inferior courts meeting in the Azarah and on the Temple Mount. These were courts of discussion of the law, which ultimately assembled together in the Gazit Chamber for final decision. In the days of Hillel and Shammai, the two courts united as one body of discussion. Hence there was no Ab Bet Din.

S. Gandz⁴⁴ held that there were two courts, one which was Sadducean with a high priest at the head and the other, Pharisaic with its rabbinic teacher. Such solution, however, recognizes two opposing courts administering justice at the same time. According

to Josephus, even if the Sadducees were stricter in judgment they were still subservient to the Pharisees in the execution of the law. An opposing court would therefore not be tolerated.

Recently Ch. Tschernowitz in his *History of the Halakah* asserted that the rabbinic and non-rabbinic sources, instead of being contradictory, were complementary.⁴⁵ Both Josephus and the Talmud give evidence of two separate institutions. But they were not two Sanhedrins, one religious, and one political, as held by many scholars. Rather, the first institution was a permanent legislative body for all governmental and religious matters; its power depended upon state sufferance and its functions, as recorded in the Talmud, were indeed active and not theoretical. The second body was a criminal court which convened in Jerusalem when necessary by the summons of the high priest or king, in whose name all criminal prosecutions were brought. The first body was known in talmudic sources as Bet Din ha-Gadol (or Bet Din of seventy-one, Bet Din of Jerusalem, Bet Din in Lishkat ha-Gazit), whereas the second was called Sanhedrin or Sanhedrin-Gedolah. In Josephus and in other non-rabbinic sources, however, both institutions were called by the name "synedrion." This caused the unnecessary confusion in the sources.

Moreover, originally there were three separate Sanhedrins: of Priests, of Levites and of Israelites. The priestly body decreed not on the basis of interpretation of law, but by the power of oaths, excommunications and ordeals. This system however was abolished when the Israelite court secured full control and became a Sanhedrin of seventy-one.⁴⁶

In explaining the Zugot heading the Bet Din, Tschernowitz regarded them as heads of two distinct legislative bodies. The Nasi was the head of a Jerusalem body and the Ab Bet Din of an Alexandrian institution.^{46a} The Semikah controversy (pertaining to 'laying of hands' on Temple offering) was the basis of division. The Nasi opposed any conduct of worship in the Bet Honi Temple in Egypt. He therefore declared against "Semikah" — that sacrifices were not to be offered there. The Ab Bet Din, heading a court in Alexandria, approved such sacrificial worship in Egypt and therefore declared for "Semikah" there. Abtalion (who cen-

sured schisms)^{46b} opposed "Semikah" and thereby demonstrated his opposition to the Alexandrian court. Hillel, coming from Egypt, could not oppose the Onias Temple and therefore also sanctioned "Semikah" there.

Tschernowitz continues: With the rise of Hillel to the position of leadership in the Jerusalem Bet Din, the Alexandrian Bet Din was dissolved. Hence only the Jerusalem body had full recognition in the Second Temple era. However, actual dual leadership began only with the disputation of Rabban Gamaliel II of Jabneh.

It is difficult to accept such a picture of the Sanhedrin because one immediately questions the historicity of an Alexandrian Court opposed to the Great Sanhedrin in Jerusalem. Even Philo in Egypt demonstrates the supremacy of the Palestinian institution.

A. Weiss⁴⁷ suggested that there were two courts. A Bet Din of seventy-one decided whether cases were to be brought to trial before a tribunal of twenty-three — the Great Sanhedrin. He differentiates between *ע"פ בית דין* (with the sanction of the court) and *בבית דין* (decided in the court). One wonders, is it not possible that the term *ע"פ ב"ד* in the Mishnah was simply influenced by the biblical wording in Deut. 17, 10-11?^{47a} Therefore such delicate distinction in mishnaic terminology as suggested is difficult to accept.

A. Kaminka⁴⁸ regarded the whole question of Sanhedrin as academic. In his opinion the Sanhedrin of the Second Commonwealth never existed. The Mishnah is only theoretical, for there could be no high court as pictured in the Mishnah. Only smaller courts known as "aliyah" existed.^{48a} The term "Sanhedrin" was brought into Judea at the time of Gabinius but was adopted in place of Bet Din only after the period of Betar, about 200 C.E.^{48b}

L. Greenwald⁴⁹ attempted to explain the Semikah controversy by asserting that the "Sanhedrin in the Gazit Chamber" was a body of Israelites whereas the "Bet Din ha-Gadol in Jerusalem" consisted of twenty-three priests, twenty-three Levites and twenty-three Israelites, with the high priest and *sagan*, thus totaling seventy-one. The Nasi was the head of the Sanhedrin and the Ab Bet Din headed the Bet Din. The functions enumerated in the

Tractate Sanhedrin belong to the Sanhedrin, whereas all other functions enumerated in other sources—*zaken mamré, sotah, eglah arufah*, intercalation of the month, the king's law, red heifer and appointment of king or high priest — belonged to the Bet Din. This opinion, too, cannot be accepted, for a differentiation between "Sanhedrin" and "Bet Din" is inaccurate, in view of the similarity of the texts of Mishnah Sanhedrin 1.5 and Shebuot 2.2.

B. Z. Katz,⁵⁰ opposing Geiger, Tschernowitz and Finkelstein, sought to reconstruct the entire picture of the Second Temple era [though he fails to deal directly with the Sanhedrin problem] by identifying the *Zadokim* in the Talmud with the Zealots in Josephus. The Zadokim (and the early Karaites) were the disciples of Zadok, the Pharisee who revolted against Herod. They were extremists in matters of national politics and also in the minute observance of the law. Thus Hillel and Zadok represented opposite poles — the liberals versus the strict conformists. Sham'mai headed the center group, agreeing with Zadok's political zeal and his strict literal interpretation of the law but following Hillel's policy of leniency in observance.^{50a} Adopting Azariah di Rossi's notion that the Boethusians (in the Talmud) are identical with the Essenes (in Josephus), Katz^{50b} identified these with the Zadokim, the extreme Pharisees. His analysis, though unique, is pertinent to the Sanhedrin problem because of the interpretation of the different schools of thought in the politics and the Halakah of the period of the Second Temple.

Further Sanhedrin-studies were made by M. Waxman,⁵¹ G. Alon,⁵² G. Ostersetzer,⁵³ P. Dikshtein⁵⁴ and B. Z. Bokser.^{54a} The latest scholarly work, analyzing the full problem, is that of L. Finkelstein.⁵⁵ In a new appraisal of the origin and development of the Great Synagogue and the Pharisees, he reached the conclusion that the Keneset ha-Gedolah was the "Great Court" of the Society of Hasideans; and in an English summary of his Hebrew study he asserts:

"Toward the end of the third century B.C.E., the Society was greatly strengthened, when Simeon II, the Just, associated himself with it, and became its leader. With him a large group of leading priests identified themselves with the Hasideans; and, for the

first time in history, the lay scholars of their Keneset ha-Gedolah became members of the Gerousia or ruling council of the Commonwealth.

"The union between the high priesthood and the Hasideans was dissolved after Simeon's death when increasing tensions among the various factions in Judah led to the persecutions of Antiochus IV and the Maccabean revolt. Thereafter the followers of the high priesthood called themselves Sadducees (i.e., adherents of the family of Sadok, the first high priest of the Temple), and dubbed their opponents (who had remained within the Society of Hasideans), Pharisees or 'heretics.' In the process of reorganization, the Society of Hasideans (or as we must now call them, the Pharisees) developed two factions, one pro-priestly, the other anti-priestly. Each was directed by a Bet Din or court, headed by the Ab Bet Din, chief of the court. Each group dealt with problems according to its traditions. Both courts met together from time to time, as the Bet Din ha-Gadol, the Great Bet Din of the whole society, the successor of the Keneset ha-Gedolah of early days."⁵⁶

These conclusions are questionable because they suggest:

1. The Keneset ha-Gedolah was the Bet Din of the Society of the Hasideans.
2. The gerousia was the Bet Din in the Gazit Chamber during the Persian and Hellenistic periods.
3. The Great Sanhedrin with the high priest at its head, in the later period of the Second Temple era, was the Bet Din in the Gazit Chamber.
4. The Pharisees had their own Sanhedrins with factional division — one pro-priestly and the other anti-priestly.

However, it is here maintained that:

1. The Keneset ha-Gedolah was only a temporary body, meeting on rare occasions. It was not merely a judicial court but concerned itself also with politics and administration.
2. The gerousia was more than a Bet Din, a court. It was the executive council of the high priest until the Hasmonean era.

3. The Great Sanhedrin (or Bet Din in the Gazit Chamber) was headed only by a rabbinic Nasi, and not by the high priest.
4. Both Pharisees and Sadducees were in the same Sanhedrin, except that the Pharisees became the majority party after the days of Simon ben Shattah.

In a posthumous volume dealing with the history of the Jews in the Mishnaic and Talmudic period, G. Allon⁵⁷ also presented briefly his views on the Great Sanhedrin⁵⁸: The origin is set in the Persian period, though the name is first mentioned in the days of Hyrcanus II, c. 50 B.C.E. *Gerousia, presbyteroi, boule* and *heber* are synonymous with Sanhedrin; the different names explain only the changes in the course of time, of the one and same institution, possessing all-inclusive powers. The High Priest was the official head, and in the last decades of its existence the institution was a priestly Sadducean body, though Pharisees also were in it. A coalition was organized whereby the High Priest served as political head and the Nasi as leader in religious matters. The active number was seventy, though the actual composition was more than that. Appointments were made by the membership itself. Its many functions included legislation as well as supervision of priestly activities. Capital punishment was administered from Hasmonean days on, only in the great Sanhedrin and not in lower courts; it continued, perhaps unofficially, until 70 C.E. when it was completely removed. The body carried on, in a changed form, even after 70 C.E.—retaining even some of its political powers. The position of Ab Bet Din was only introduced in Jabneh.

It is to be noted from this analysis that Allon, who devoted most of his volume to the period after 70 C.E., shed little new light on the Second Commonwealth era and on the complex problem of the Sanhedrin. In fact, he sensed this difficulty in his remarks:⁵⁹ —
 ברם בעיה קשה זו — חליפותיה של הסנהדרין בהמשך הדורות שבפני
 הבית — אין בידינו ליזן כאן ואפלו במרקוטרף
 repetitive of earlier scholars, are already refuted in the present volume which, taking into consideration all that has been written on the subject before, attempts to reconstruct the picture of the Great Sanhedrin in its broadest frame.

EXCURSUS II

"SYNEDRION" IN CLASSICAL LITERATURE

In an Appendix: "The Synedrion and the Sanhedrin," in the second edition of his *Who Crucified Jesus?*, S. Zeitlin notes the use of "synedrion." A study of comparative terms nevertheless is essential, for purposes of defining the usage for "court."

1. SYNEDRION AND DIKASTERION

The following sources reveal the interchange of the terms *synedrion* and *dikasterion*:

a) Lysias¹ [pleading for a soldier of the Corinthian War (395-386 B.C.E.), accused of contempt of court]: "You have heard how the law expressly enjoins the punishment of those that utter abuse in a *synedrion*, but I have produced witness that I did not enter the magistrate's hall . . . for it is evident that I did not go into the *synedrion* and the law enjoins that the fine is to be due for those who misbehaved inside it. They neither submitted the act to investigation nor went into a *dikasterion* to get their proceedings confirmed by a vote."

b) Isocrates:² "And you will observe that those who live upon your contracts and the litigation connected with them are all but domiciled in the *dikasteria* while no one has even seen me either at the *synedria* or at the preliminaries or in the *dikasteria* or before the arbitrators."³

c) Demosthenes:⁴ "This denunciation, *O andres dikasterion*, was lodged by the defendant. . . . It was received . . . and exposed to public view in front of the *synedrion* until the fellow was bribed to allow it to be crossed out just when the magistrates were summoning him for preliminary hearing."⁵

These sources perhaps reveal that *synedrion* was a body of preliminary examination and *dikasterion* the actual trial court.

2. THE AREOPAGUS

A scrutiny of the following passages shows that *dikasterion*, *bouleuterion* and *synedrion* were used interchangeably for the Areopagus.⁶

a) Lysias:⁷ "Our fathers put supervision of decorum in charge of the *boule* of the Areopagus, which excelled all other *synedria* of Hellas."

b) Aeschines:⁸ "Take for example the *boule* of the Areopagus, the most scrupulous *synedrion* in the city. I, myself, have before now seen many men convicted before this *bouleuterion* though they spoke most eloquently and presented witnesses; and I know that before now certain men have won their case, although they spoke most feebly and although no witnesses testified for them. For it is not on the strength of pleading alone, nor of the testimony alone, the vote was given but on the strength of knowledge and investigation. And this is the reason why that *synedrion* maintains its high repute in the city."

c) Lycurgus:⁹ "The *Areopago synedrion* is far superior to other *dikasteria* that even those who are convicted before it do not question the justice. You should take it as your model."¹⁰

EXCURSUS III

"SYNEDRION" IN THE PAPYRI

Two papyri are extant for the important trial of Hermias in Thebes, about 119 B.C.E.

a) The Paris Papyri¹ uses the term *synedrion*.

b) The parallel text in the Turin Papyri² has *kriterion*.^{2a}

Other instances of *synedrion* are found in the Tebtunis Papyri:

a) A complaint of theft, dated in the early second century B.C.E., reads in part: "He went off with my garment. I therefore ask you if you see fit to order a letter to be sent to the proper official, to summon him before you, in order that he may be punished for this at the *synedrion*."³

b) A complaint of assault, also dated in the second century B.C.E., reads: "I beg of you if you think fit to secure the culprits until we come to the public *synedrion*."⁴

In the Oxyrhynchus Papyri⁵ we have parts of a complaint, dated in the late first century B.C.E., dealing with a dispute before the *synedrion* about the fairness of a measure of corn.⁶

Koinon synedrion was a special summoned meeting of police officers, but the term is often used as a sort of tribunal.⁷ It may be compared to *koinon dikasterion*⁸ and *kriterion*⁹ found in the papyri.

EXCURSUS IV

“SYNEDRION” IN THE SEPTUAGINT

1. *Sod* (סוד).

Sod is translated as *synedrion* three times in the Book of Proverbs and once in Jeremiah.

a) Prov. 3.32: — כי תועבת ה' נלוֹת וְאֶת יִשְׂרָאֵל סָחֹז “For every transgressor is unclean before the Lord; neither does he sit in the *synedrion* among the righteous.” Heidenheim “sees in this verse a Pharisaic attack on the Sadducees, the paramonists, and regards *synedriasei* as an allusion to the Sanhedrin.”¹

b) Prov. 11.13: — הַוּלָךְ רְכִיל מְגֻלָה סָוד “A double tongued man discloses the secret plans of a *synedrion*.” The Rabbis applied this verse particularly to the Sanhedrin: תניא לכשיצא לא יאמר אני²: מוכחה וחבירי מה עשה לחבריו רבבו עלי. ועל זה נאמר הַוּלָךְ רְכִיל מְגֻלָה סָוד.

c) Prov. 15.22: — הַפְּרִ מְחַשְּׁבֹת בָּאֵין סָוד “They that honor not *synedria* put off deliberation.”

d) Jer. 15.17: — לֹא יִשְׂבַּתִּי בְּסָוד מְשָׁקִים “I have not sat in the *synedria* of them as they mocked.”

In other cases, in these same books, *Sod* is translated as *synagogue* or as *boule*:

(1) Jer. 6.11: — וְעַל סָוד בְּחוֹרִים יְחִדּוּ “and on the *synagogue* of young men together.”

(2) Ps. 111.1: — בְּצֹזֵד יִשְׂרָאֵל וְעַדָּה “In the *boule* of the upright in the *synagogue*.” Comp. Gen. 49.6. בְּסָודֵם אֶל תְּבוֹא נֶפֶשִׁי —*boule*.

In Ezek. 13.9: בסוד עמי לא יהו is rendered by the LXX: “They shall not partake in the instruction of my people.” The Vulgate has in *consilio populi*. The Talmud applies this verse to the council regulating the calendar:³ כי אותבוחו בסוד העיבור ג. זה סוד העשור.

2. *Sha'ar* (שער)

The word *sha'ar* in the Hebrew text, too, seems to have prompted the use of the term *synedrion* in translation.

a) Prov. 31.23: — נודע בשערם בעלה בשבתו עם זקני הארץ “And her husband becomes a distinguished person in the gates when he sits in *synedrion* with the old inhabitants of the land.”

ראמות לאויל חכמות בשער לא יפתח פיהו מחשב לחשע לו בעל מoitות יקרוא “Wisdom and good understanding are in the gate of the wise; the wise turn not aside from the mouth of the Lord but deliberate in the *synedrion*.”

“Wisdom and good understanding are in the gate of the wise; the wise turn not aside from the mouth of the Lord but deliberate in the *synedrion*.”

Traditionally *sha'ar* is explained as a court or gate of justice. In Targum Onkelos it is rendered with the addition of the term “Bet Din,” thus:

לקדם סבי קורתא ולתרע בית דין אמרה אל זקני עירנו ואל שער מקומו (1) Deut. 21.19: —

לקדם סבי קורתא לתרע בית דין אטרא אל זקני העיר השערה (2) Deut. 22.15: —

In the two examples of the rendition of *sha'ar* in the LXX of Proverbs, as quoted above, it will be seen that in the first part of each sentence, the word *sha'ar* was translated simply as *pulē* (gate). But in the second half, *synedrion* was added to the translated text, giving it a rather strange effect. As a gloss, therefore, it corresponds to the targumic and rabbinic view of *sha'ar* as “Bet Din.”

3. *Din* (דין).

A more striking instance of the Septuagint's use of “*synedrion*” is where *din* seemed to influence the particular rendition:

a) Prov. 22.10: — גרש לץ ויצא מדון וישבות דין וקלין “Cast out a pestilent person from the *synedrion* and strife shall go out with him for when he sits in the *synedrion* he dishonors them all.”

It is apparent that the phrase “from the *synedrion*” is an addition, since the translator already translated the word *מדון* correctly as “strife.” This addition may be due to the fact that, instead of *וישבות דין* in the text he may have read *וישב בבית דין* suggesting the notion of “he sits in the *synedrion*.⁴ Hence the translator

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seemed to have knowledge of the technical term "Bet Din" for he converted the reading of his Hebrew text וַיֵּשֶׁבּוּ דִין to refer to the *synedrion*.⁵

Though the technical term "Bet Din" is not found in the Bible, the word *din* is very common. Cf. Deut. 17.8; Ezra 7.25.

רוכבי אthonות צחורות יושבי על מדין והולכי על: (b) Judg. 5.10: "Ye that mount a she-ass at noon-day, yet that sit in the *kriterion* and walk by the roads of them that sit in the *synedrion* by the way."

The translator may have read מדין interpreting it as "judgment" (instead of "cloth"). "Synedrion" is added to the passage, though the text does not call for it.⁶ The Targum has: ומתחברין. Rashi and other commentators follow a similar interpretation: Cf. Erub. 54b: תניא דבר רב ענן יושבי על מדין שדנין דין אמרת לאמתו. *Yalkut Shimoni* (in the name of *Tana d'be Eliahu*) on Judges 5.10 has: יושבי על מדין שמעמידין הדבר על הדין והולכי על דרך שיחו אלו סנהדרין שהעולם נשען עליהם. The Vulgate has "est sedestis in iudicio, et ambulatis in via, loquimini."⁷

4. *Kahal* (קהל)

Another unique "synedrion" translation is in Prov. 26.26: — חכסה שנאה במשאון תגלה רעתו בקהל frames deceit but being easily discerned exposes his own sins in the *synedrion*." Comp. *Yalkut Shimoni*, ad. loc: תנא ר' חייא מפרשין את החנפיהם מפני חילול שם שנא' תגלה רעתו בקהל צא ולמד מדוראג שהיא ראש סנהדרין.

In other books, and even in Proverbs, *Kahal* is generally translated as *ekklesia* or *synagogue*:

a) Prov. 5.14: — בתוכ קהיל ועדת "In the midst of the *ekklesia* and *synagogue*."

b) Prov. 21.16: — בקהל רפאים ינווח "Shall rest in the *synagogue* of giants."

5. *Riv* (ריב)

A further exceptional use of *synedrion* in Proverbs is found in an instance where the actual text contains no words as *sod*, *din*,

אם חכتوש את *sha'ar, kahal* to justify its usage. Thus, Prov. 27.22: *האoil במכתש בתוך הריפות בעל לא תסור מעליו אלתו* “Though thou scourge a fool disgracing him in the midst of the *synedrion* thou would still in no wise remove his follies from him.”⁸

אין מחייב ליה לשטיה במכתשי בגו סיעטה בנו כנישתא The Targum reads *בְּנָו כִּינְשָׁתָא* בנו כנישתא. *ובאוֹדֶךָ לֹא תַּעֲבֵיד מִגְנִיה שְׂמִיחָתָא*. The Peshitta has *ובאוֹדֶךָ לֹא תַּעֲבֵיד מִגְנִיה שְׂמִיחָתָא*. No doubt the Peshitta and Targum follow the LXX. The Targum on Proverbs is said to be influenced particularly by the Syriac version.⁹

Though *רִיפּוֹת* is usually translated as “ground corn” (II Sam. 17.19), F. Delitzsch already suggested reading *הריבות*.¹⁰ A. J. Baumgartner¹¹ accepted Heidenheim’s emendation of *בעל* *רִיפּוֹת* but added that *אוֹדֶךָ* = *l’aire* = *synedrion*. A. Kaminka¹² suggested *עליה* for recognizing that courts were called “aliyah,” e.g., *עלית חנניה בן חזקיה* His view is especially based on the interpretation of Ps. 66.5: *גּוֹרָא עַלְילָה phoberon en boulais*, “terrible in his counsels,” which Kaminka reads *גּוֹרָא עַלְילָה*.

It may be postulated that the Septuagint followed a different reading, based upon the mere interchange of **ב** to **ב** and upon the replacing of the order of the difficult words. This originally may have been *אם חכטוש את האoil במכתש בתוך בעלי הריבות לא תסור מעליו אלתו*. In the Septuagint *riv* is often translated as *krisis* (*lawsuit*). Targum Deut. 21.5, also translates *riv* as *din*.¹³ Cf. also Isaiah 3.13: *גַּזְבֵּן לְרִיב הָ וּוּמֶד לְדִין עָמִים*. Hence *riv* and *din* seem to be synonymous and may have been the cause for the unique translation.

דברי *רִיבּוֹת בְּשֻׁעְרִיךְ* is also found in Deut. 17.8: *רִיבּוֹת בְּשֻׁעְרִיךְ* and is translated as “matters of judgment” or lawsuits (*kriseis*). The Targum has *פְּתָגָמִי פְּלָגָחָא דִּינָא*. Therefore it may be concluded that the phrase in Prov. 27.22 was read *בעל הדין* (like in Abot. 1.8) and used as a reference to “judgment.” Consequently this was translated as *synedrion*, *בְּנָו כִּינְשָׁתָא* and *בְּגַו סִיעַתָּא* in the different versions.

6. ישב

The last instance of the usage of “synedrion” is in the LXX Ps. 26.4, dealing with justice and begins with the phrase: שפטני ה' מתי שוא: “I have not set with the *synedrion* of vanity.”

In Job 11.11: כי הוא ידע מתי שוא is translated by the Septuagint simply as “for he knows the way of transgressors.” In our text of Psalms it should therefore have been “men of vanity”; because of “judgment” mentioned in the beginning of the verse, the word ישבתי, “sat,” compelled the use of “synedrion.”

Interestingly, Targum Jonathan on Psalm 107.32: וּבְמוֹשֵׁב זָקְנִים: וּבְסֶנְהָדְרִין דְּחַכִּימִיא יִשְׁבֹּחַן יִתְהַלֵּל הָא remarks. Furthermore, Daniel 7.10, דִּינָא יִתְיַב is translated by the Septuagint as *kritērion*. Thus סֶנְהָדְרִין = מוֹשֵׁב, *kritērion*. This is very close to the Greek expression, *synedrion kathezein*.¹⁴

EXCURSUS V

"SYNEDRION" IN HEROD'S TRIALS

Josephus in his *War* mentions that Varus recommended to Herod to "hold an inquiry into the plot [of his sons] before a joint [*koinou*] *synedrion* of his own relatives and the provincial governors."¹ Immediately following, we read, "Acting on this advice, Herod repaired to Beirut, the place appointed by Caesar and there assembled the *dikastērion*."² Further on, it is written: "The sons were not produced by Herod in court [*diken*]."³ Finally, it is noted: "Herod declared to the *synedrion* the offenses."⁴

Evidently the inquiry has no bearing on the Jewish Sanhedrin for these passages demonstrate the power of *pater familias* and Josephus also speaks of "the laws of the country,"⁵ which Herod could have abided by if he wished to, thus showing that the court was an extraordinary one.⁶

In the matter of the trial of Hyrcanus, Schürer,⁷ Büchler,⁸ and Derenbourg⁹ maintained that the synedrion was a "court of friends," similar to Herod's procedure in other cases. Graetz held that the Bene Bathyrā, appointees of Herod, gave the death penalty.¹⁰ Juster believed that the Great Sanhedrin, muzzled by Herod, conducted the trial.¹¹

It is plausible that Herod sought to justify his act of killing Hyrcanus, the high priest, for he feared a complaint to the Roman authorities as in the case of his brother-in-law Aristobolus. Therefore he showed the letter to the highest tribunal. Hence the source in *War*¹² does not mention "synedrion." In reality there was no actual trial before a synedrion. Herod acted as was his wont, and only brought proof for his action to offset later rumblings.¹³

In Antipater's case, "Herod said to Antipater, 'I offer you a *dikastērion* and as judge (*dikasten*) Varus.'¹⁴ . . . On the following day the king assembled a *synedrion* of relatives and friends.¹⁵ . . .

Varus drafted a report of the *synedrion* for Caesar.¹⁶ No Jewish Sanhedrin is apparent here.

In the case of Herod's own trial, "synedrion" and "dikastērion" are not mentioned in *War*¹⁷; only *ekalei kritesomenon* is used. In *Antiquities*,¹⁸ however, where "synedrion" is mentioned throughout, it is accompanied by the parallel expression *ekalei dikasomenon*. Both sources also use the word *dikē* for the trial. Thus Herod's trial demonstrates the synonymous use of *synedrion*, *kritērion* and *dikastērion* (though the latter two are in the verbal form only).

EXCURSUS VI

“SANHEDRIN” IN TANNAITIC SOURCES

1. ANACHRONISMS

The “retrojection” of the Great Sanhedrin to earlier days may be seen in the following illustrations:

a) M. K. 26a: ואלו קרעין שאין מתאחים... ועל נשייא ועל אביך מנהן דכתיב (שמעאל ב. א) ויחזק דוד בגדי יקרעם... ויספחו על שאל ועל יהונתן בנו שאל זו נשיא יהונתן זו אביך.

b) ב"ד של נח נמי גורו: (Ab. Zar. 36b)

c) נמלcin בסנהדרין ושואליין באורים: Ber. 3b-4a; Sanh. 16b: ותומים אמר رب יוסף מאי קרא. ואחרי אחיתופל בניהו בן יהוידע ואביתר. בניהו בן יהוידע זה סנהדרין. ואביתר אילו אורים ותומים. תניא נמי הכי שיעוריין של עונשין הלכה למשה (Yoma 80a): מסיני. אחרים אומרים בית דין של ישבチ תיקנות (לפי רשי עתניאל בן קגנו).

d) אמר رب יהודה אמר רב ששח חדש נצטרע דוד: (Sanh. 107a) ונסתלקה הימנו שכינה ופירשו ממן סנהדרין.

e) אמר ר' אלעזר בגין מקומות הופיע רוח הקודש. (Mak. 23b: ב"ד של שם. בבית דין של שמעאל הרמתי. ובבית דין של שלמה. מכדי גمرا הוא דשלח ליה Mai לא אבה דוד) (B. K. 61a: לשותם דלא אמרינחו ממשיתו אמר כך מקובלני מבית דין של שמעאל הרמתי כל המוסר עצמו למות על דבר תורה אין אמורים דבר הלהקה ממשמו.

f) אמר רבא מלמד שחגר (דוד) הרבה כישמעאל ואמר: (Yeb. 77a) כל מי שאינו שומע הלכה זו יזכיר בחורב. כך מקובלני מבית דין של שמעאל הרמתי. עמוני ולא עמוני. מואבי ולא מואבית.

An interesting example of anachronism is the Yer. Shekalim 50a, in the story of the returned keys to heaven: בשעה שעלה נבוכדנצר לכאן בא וישב לו בדופן של אנטוכיה ויוצא סנהדרין גדולה לקראו.

Nebuchadnezzar, the Hellenistic city of Antioch and the Great Sanhedrin are linked together, as if these were contemporaneous!

2. BET DIN

"Bet Din" meaning a court is unquestionable. Some instances of special historic significance are:

a) Yoma 1.3: מסרו לו זקנים מזקני בית דין :

This refers to the Bet Din in the era before 70 C.E.

אם באננו לדון אחרי ב"ד של ר' ג' צריכין אנו לדון : b) R. H. 2.8: אמר באננו לדון אחרי ב"ד וכ"ד שעמד מימות משה עד עכשיו.

This refers to Rabban Gamaliel II.

c) Ket. 1.5: ב"ד של כהנים היו נובין :

This is the priestly court in the epoch before 70 C.E.

שמעאי הזקן אומר אילו הייתה השעה : (64) d) Tos. Shebi. 3.10: פגוניה גוזר אני... ב"ד של אחרינו גוזר... .

A court after Shammai's period is mentioned.

e) Tos. Ma'aser Sheni 5.15: משחרב הבית ב"ד הראשון : (96) לא אמרו ולא כלום ב"ד האחרון גוזר שיהא נפדה חזך לחוימה .

This refers to a court immediately after 70 C.E.

Other uses in the Mishnah are:

M. K. 33: גמרות ב"ד .

Git. 5.6: רבבי הוшиб ב"ד :

Hor. 1.4: מופלא של ב"ד .

Hor. 1.5: ב"ד של אחד מן השבטים .

Ab. Zar. 2.6: רבבי וב"ד .

Sanh. 9.6: זקנוי ב"ד .

Git. 5.7: מפני שעשאן ב"ד .

Eduy. 5.6: געשן אבב"ד .

Men. 10.3: שלוחוי ב"ד .

Various uses in the Tosefta are:

Yeb. 14.7 (259): שמע מב"ד של ישראל... מקאטריסין של מלכות :

Oh. 18.18 (617): מתירא אני מב"ד הגadol :

Sot. 11.12 (316): בית דין של שמואל :

Banh. 11.7 (432): בית דין של פלוני :

Ber. 2.6 (3): ר' ג' וב"ד ביבנה :

R. H. 2.3 (211): ב"ד של יפתח, משה, ירבעל :

Sot. 11.3 (316): ב"ד של דוד היושב בשער ירושלים :

רשב"א אומר אף באלכסנדריא בראשונה כשהיה : (23) **שם ב"ד.**

רשב"א וב"ד : Kel. 4.1 (78):

3. BET DIN HA-Gadol

"Bet Din," indicating the highest court, is used in the following sources:

a) Sanh. 1.5; Tos. Sanh. 3.4 (418): **ב"ד של צ"א**

b) Sot. 1.4; 9.1; Gitt. 6.7; Sanh. 11.4; Sifre Deut. 154: **ב"ד הנדול בירושלים**

c) Sanh. 11.2; Yer. Sanh. 19c; Sifre Deut. 154: **ב"ד הנדול**
שבלשכת הגויה.

d) Tos. Hor. 1.4. (474); Tos. Sot. 9.1 (312); Yer. Hor. 46a: **ב"ד שבלשכת הגויה.**

e) Sanh. 88b; Yer. Sanh. 19c: **ב"ד (סנהדרין) של ע"א בלשכת הגויה.**

4. LISHKAT HA-GAZIT¹

Some of the sources using "Lishkat ha-Gazit" are:

a) Tos. Shek. 3.27 (179): **זקן אין מושיבין אותו בלשכת הגויז:**

b) Tos. Hag. 2.9 (235); Sanh. 7.1 (425): **ואילו באין לב"ד:** **הגדול שבלשכת הגויה.**

c) Tos. Yoma. 1.10 (181) Sukk. 4.16 (199): **כיצד מפייסין:** **ונכנסין לשלשכת הגויה.**

d) Tos. Sot. 9.1 (312): **ומצינין את מקומו עד שיבואו לב"ד:** **שבלשכת הגויה.**

e) Tos. Hor. 1.4 (474): **שבהורה עד שהורו ב"ד שבלשכת הגויה.**

5. SANHEDRIN

The use of "Sanhedrin" in various ways:

a) Sanh. 4.3; Sot. 9.11: **סנהדרין:**

b) Sanh. 1.6; Mid. 5.4: **סנהדרין גדולה.**

c) Shebu 2.2: **סנהדרין של ע"א.**

d) Yer. Sanh. 19c: **סנהדרין שבלשכת הגויה:**

e) Sifra. 19a; Sifra. Zutta Num. 15.24: **סנהדרין גדולה**

שבלשכת הגויה.

- f) Kid. 4.5: אין בודקין... ולא מן הסנהדרין ולמעלה
 g) Sanh. 1.6: כמה תהא בעיר ותהא רואיה לסתנדהרין
 h) Mak. 1.9: שלא תהא סנהדרין שומעת מפני התורגמן
 i) Mak. 1.10: סנהדרין נוהגת בארץ ובザל

The Gemara² adds a comment to this source in the name of Simon ben Shattah, quoted by R. Judah ben Dostai: בראח מארך לאץ אין סותרים את דינן. לחוצה לאץ אין סותרים את דינן.

The Tosefta³ does not mention the sage's name but uses the phrase "Eretz Yisrael." Comp. Yerushalmi Nedarim 40a כת הביבה עלי כת קטנה שבארץ ישראל מסנהדרין גדולה Nachmanides on Numb. 35, 29, regards Makkot 1.10 as referring to the institution of courts in the diaspora and he maintains that the Palestinian Sanhedrin dissolved with the destruction of the Temple.⁴

- j) Mak. 1.6: סנהדרין ההורגת אחת בשבוע
 k) Tos. Sanh. 8.1 (427): כל סנהדרין שיש בה שנים יודען לדבר רואיה לעשות סנהדרין

Rabbi Eliezer ben Zadok comments here: כשהיה ר'ג ישב ביבנה. He uses only the expression "b'Jabneh" and not "Sanhedrin b'Jabneh." Remarkably, the term "Sanhedrin b'Jabneh" is never found, but "Bet Din b'Jabneh" is used at times in contrast to "Bet Din sh'b'Yerushelaim."^{4a}

If the term "Sanhedrin" was introduced only after 70 C.E.,^{4b} why is it not used for Jabneh or Usha?

ר' אלעזר בן יעקב אומר זקנייך זו סנהדרין (1) Sot. 45a: ראב'י אומר זקנייך זו ב"ד הגדל ושופטיך Compare Yer. Sot. 23c: זה מלך וכ'ג

m) In Yer. Ta'an. 68b the Great Sanhedrin is mentioned together with the *Anshe Mishmar* (Men of the Priestly Watch): חני אנשי משמר היו מתחננים בכל יום שני וכו'... חני סנהדרין גדולה הייתה מתחננה עמהן וסנהדרין גדולה יכולה לתחננות בכל יום? מחלוקת היו עצמן על בתיה אבות

6. SANHEDRIN AND BET DIN

The similarity in usage of "Sanhedrin" and "Bet Din" is recorded in versions of Rabbi Jose's baraita.⁵ Thus the Yerushalmi uses the term "Sanhedrin" in this baraita whereas the Babylonian Talmud and Tosefta use "Bet Din."

The interchangeable use of "Bet Din" and "Sanhedrin" may also be seen in the following texts:

a) Tos. Sanh. 3.9 (419) אמרו לו אין ב"ד שקול... אין המלך יושב בסנהדרין... הרוגי ב"ד נכסיהם לירושים... הרוגי מלך נכסיהם למלך... אין עושין סנהדריות לשבטים אלא ע"פ ב"ד של ע"א.

b) Tos. Sot. 15.6 (321) רשב"א אומר אין כל צרה שאין ב"ד: מבטלי שמחה כנגדה... משבטלה סנהדרין בטל Shir... משתייה סנהדרין קיימת...

Here "Sanhedrin" follows the phrase containing "Bet Din" which is used for the contemporary period. Apparently "Sanhedrin" refers to the earlier period. The Tosefta also reads ובי מה היה סנהדרין מועלת but Yerushalmi Sotah 24b is more exact by reading ובי מה היה סנהדרי גדולה מועלת thus alluding to the period before the dissolution of the Great Sanhedrin.

Greenwald,⁶ differentiating between the terms "Bet Din" and "Sanhedrin," speaks for the existence of two institutions:

או יתרכז הקושיא הגדולה מדוע מצינו בחז"ל פעמים רבות הב"ד הגדל בשם סנהדרין ופעמים רבות בשם ב"ד הגדל בירושלים כי באמת שני בתים דין היו ולא מצינו אף פעם "סנהדרי גדולה בירושלים" כמו שמצינו "בית דין הגדל בירושלים"

When one recognizes, however, that "Bet Din" is a general term whereas "Sanhedrin" is used in a more specific sense, i.e., a higher court, the difficulty of terminology is removed. "Sanhedrin" is never applied to Jerusalem or Jabneh even though we speak of סנהדרי קטנה. Factually, "Bet Din" is used for these cities and "Sanhedrin" is used specifically for the court in Lishkat-ha-Gazit.

EXCURSUS VII

THE GEROUSIA

In the Septuagint זָקְנִים הַעֲיר, זָקְנִי יִשְׂרָאֵל were usually translated as "gerousia," when these terms occur in the Pentateuch and Joshua,¹ books which were translated into Greek about 250 B.C.E. Significantly, "gerousia" is not found in the other biblical books reputedly translated at a much later date. From these facts it may be concluded that when the later books were translated the institution of gerousia already was non-existent in Judea. Hence, *zekenim* was not translated as gerousia but simply as *presbyteroi*. However, at the time of the translation of the earlier books, there was a gerousia; this reflected upon the peculiar translation of "zekenim."

The mention of "gerousia" in the Apocrypha also substantiates the assumption that it was an early institution. The term occurs a few times in the translation of the book of Judith,^{1a} in referring to an authoritative institution in Jerusalem at the head of which was the high priest. Following the example of the Septuagint with which the translator no doubt was familiar, he presumably translated the original term "zekenim" into "gerousia."

Recognition of the fact that "gerousia" is lacking in the Septuagint prophetic books which were translated about the first century B.C.E. leads to a conclusion that Judith, which *does* contain the term, was translated at a very early date, i.e., shortly after the original script was produced and at a time when the *gerousia* still existed. Though the actual date of the translation of Judith is unknown, there is definite evidence that the book itself originally was written in Hebrew or Aramaic before or during the Maccabean Revolt.² Hence, on the basis of the book of Judith, one may look for an institution of elders like *gerousia* until about the period of the Hasmonean Revolt.^{2a}

Further mention of "gerousia" is in II Maccabees which is an

epitome of a larger Greek work by Jason of Cyrene who lived not long after the events he recorded—probably in the days of Jonathan.^{2b} The compiler of II Maccabees devoted his attention to the events leading up to and including the heroic deeds of Judah—to a period ranging from about 175-160 B.C.E. In Chapter 4.44 he tells of three men who were sent by the gerousia to place an accusation against Menelaus; these were killed by Antiochus. Thus this record shows the existence of a gerousia in the time of Judah Maccabeus. This is further strengthened by the record in II Maccabees 11.27, containing the official letter which Antiochus V sent to the gerousia in 148 A.S. (165-4 B.C.E.).^{2c} Since the main body of the book, excluding the introduction, dates from Jonathan's day, one can understand why the author speaks only of Judah. A later writer would speak of the exploits of Jonathan. However, it is not to be overlooked that the second book was compiled outside of Palestine and that the author may have used the term prevalent among the Greeks.

The term also is found in a letter prefixed to the same book but which in itself had no direct connection with it. This letter, cited in the prologue, II Maccabees 1.10, is considered to be of a later date, 188 A.S. (124 B.C.E.) and was aimed toward influencing the Egyptian Jews to observe Hanukkah. It was addressed to the highest Jewish body at that time in Egypt³ and therefore the author used the term "gerousia" which was the name of that council; but "gerousia" has no reference here to any Palestinian institution.

A second explanation may be offered. In all probabilities the date^{3a} of the letter is not 188 A.S. but 148. This date is in accordance with MSS Codex 55 and 62.^{3aa} It would correspond with the year 165 B.C.E. and fit in with the notice in I Macc. 4.52. As such, "gerousia" in the letter definitely refers to the period of Judah when there was still such an institution. This corresponds to the date of the letter in II Macc. 11.21 and II Macc. 11.33.^{3ab}

That the Palestinian gerousia existed after Judah Maccabeus' day is indicated by I Maccabees 12.6. This part of the book was written in Palestine originally in Hebrew, probably about the be-

ginning of John Hyrcanus' reign (136-5 B.C.E.).^{3ac} The term "gerousia" occurs only in the copy of a letter which Jonathan dispatched to the Lacedemonians asking for a friendship pact,^{3b} though the answer to the letter as received by Simon has *presbyteroi* (I Maccabees 14.20). The chances are that Jonathan sent a Greek letter containing the word "gerousia," though our text was originally Hebrew.^{3c} Hence it might be assumed that Jonathan as a high priest still had his gerousia.

Josephus also reveals that the term "gerousia" pertains to an early institution. He mentions it only with reference to events preceding the Hasmonean period; never to subsequent events in Judea. Thus, speaking of the biblical law of appeal of justice^{3d} before higher authorities, or of the turbulent period after Joshua's death,^{3e} or of the fear of the Israelites in their war against the Philistines,^{3f} he uses "gerousia." But these records have no historic value for us, because they present only the translation of the biblical "zekenim" as given in the Septuagint which Josephus might have utilized as his source. They only corroborate the fact that "gerousia" was a very ancient institution and existed in biblical days. But they give no hint as to its being in the era of the Second Commonwealth.

The only historic mention of "gerousia" by Josephus which might affect our problem is in the description of the meeting of the high priest, Simon, with Antiochus III.^{3g} The Jewish leader was accompanied by his gerousia. We can deduce from this evidence nothing more than the existence of the gerousia in 196 B.C.E.⁴

The reference to gerousia in the communication of Jonathan^{4a} to the people of Lacedemonia, as recorded in Josephus, might have been derived from the original Greek letter in I Maccabees 12.6 which served the historian as his source of information. But this, we have already seen, only proves the existence of a gerousia in Jonathan's day. Similarly, "gerousia," with reference to the Jews in Egypt^{4b} has no bearing on our study of Palestinian institutions.^{4c}

In a comparative study of "synedrion" and "gerousia," it is also necessary to take cognizance of their usage in Acts 5.21: "The

High Priest came and they that were with him and called the synedrion together and the gerousia of the children of Israel and sent to prison to have them [the apostles] brought." What is the significance of both institutions mentioned in the same phrase? Thomson⁵ seeks to explain the difficulty by declaring that "the identity of the two terms can hardly be doubted, as there is no evidence of the existence of any other court to which the name gerousia might be applied, as it is unnatural to take *kai* in an explanatory sense (i.e.) here. It must be supposed that the author used one of the words loosely, regarding synedrion as an inner circle within the general court. Possibly, he wished to emphasize the fact that on this occasion, not only the necessary quorum but the whole council of 71 members were summoned."

Although one recognizes that the author used his terms loosely, an examination of the Gospels shows that we have no knowledge of any number in the council, nor do we know of any inner circles within the general court. The entire existence of a "general court" is very doubtful here. Moreover, the existence of a gerousia in Palestine at that time is unhistorical.

Very likely "gerousia" simply meant "elders," *zekenim*, and to *synedrion kai passan ten gerousian* meant "the assembly of all the elders of Israel" summoned by the high priest. From that point of view it was a copy of the Septuagint translation of the phrase *כָל זָקְנֵי יִשְׂרָאֵל*. No conclusive proof therefore exists for a gerousia in Judea in the time of Peter. Neither could it be affirmed that the gerousia of the early period was identical with the Palestinian *synedrion* mentioned in sources of a later date. Though many claim^{6a} that the gerousia was formed in complete imitation of the Greek senate, wherein a separation of the sacred and secular existed, this cannot be accepted. The institution of *zekenim* (gerousia) existed long before the Hellenistic period. Furthermore, it should be remembered that in the Jewish state of that very early period there was no distinct division of the sacred and secular. There is no trace at all of a select body of elders, distinct from the gerousia, possessing only spiritual or religious authority. Everything was vested in the gerousia of the high priest.⁶

EXCURSUS VIII

THE PRESBYTEROI

In the Septuagint “*presbyteroi*” is often used as a rendering of *zekenim* and, as a synonym of *geron*, is found in the later books of the Bible.¹ Its usage points to the aristocratic figures who were the most prominent individuals in the government.² In itself “*presbyteroi*” does not give any hint of the existence of an established institution. Therefore one cannot say that “*gerousia*” and “*presbyteroi*” are identical terms.³

“*Presbyteroi*” is to be recognized only as a common noun for leaders, for any period in Jewish history.⁴ For instance, it was employed by Josephus^{4a} when he spoke of elders and high officials coming to Alexandra to ask about the succession to the throne. There is no evidence of any concerted action by a regular and definite institution, i.e., by an established body.⁵

It is true that the term *presbyterion* in the New Testament^{5a} pertained to a council of elders. But it had so many applications that at present we cannot identify the nature of the particular council as that of a definite lawmaking body. Members of any ruling institution in any period may have been called *presbyteroi*, *zekenim*,⁶ “elders.” The members of the Great Sanhedrin were also generally called *zekenim*.⁷

EXCURSUS IX

SYNONYMS OF SYNEDRION

Dikastērion, kritērion, bouleutērion, koine, ekklesia, synagoge as well as *heber, edah* and *kenishta* were recognized as synonyms of *synedrion*. It is therefore important to investigate these terms.

1. *Dikastērion*

“Dikastērion” as used by the Attic orators with reference to their own courts¹ and for the Areopagus has already been studied. It is also mentioned in the papyri among a collection of court decisions of the reign of Ptolemy III; one case specifically is that of a Jew against his fellow-man.^{1a} In the Codex Alexandricus of the Septuagint, Judges 6.32, it is also found.² Josephus uses the term for seats of judgment,^{2a} for the trial of Alexander, the son of Herod, before Augustus’ tribunal;^{2b} for Zechariah’s mock trial by the Zealots;^{2c} in the speech of John of Gischala to the Zealots concerning the laws (*nomon*)^{2d} and finally for his (Josephus’) own rule in Galilee.^{2e} “Dikastērion” also is employed in connection with the trial of Herod’s sons at Beirut³ and Antipater’s trial before Varus.⁴ In these instances, in the parallel passages, “synedrion” is used. Philo also combines “dikasterion” with “synedrion.”⁵

An interesting parallelism for *dikastērion* may be found between Josephus and the Mekilta: In *Ant.* 8.1.4 Josephus speaks of Joab, who fled to the altar for sanctuary, asking to be brought to the *dikastērion* to make his defense. This narrative corresponds to the tradition on Exodus 21.14: “Thou shalt take him from Mine altar to die,” upon which text the comment is made — “The Sanhedrin was near the altar.”^{5a}

On the basis of these sources one is inclined to relate “Sanhedrin” with “dikastērion.”

2. *Kritērion*

“Kritērion” in the papyri and its similarity to “synedrion” has already been seen.^{5b}

In the Septuagint it is found four times — in the translation of the following: (1) Exodus 21.6: וְהִנֵּשׁוּ אֶל הָאֱלֹהִים (2) Judges 5.10: יְשֻׁבֵּי עַל מִדְיָן (3) I Kings 7.7: אֲוֹלָם הַמִּשְׁפָּט (4) Daniel 7.10: דִּינָא יְתִיב. In the Hebrew text all of these references deal with the realm of justice. However, the readings of “kritērion” in the LXX are doubtful. Only in Susanna¹⁰ (Theodotion version) l. 49, which may have been based on a Greek translation dating from the Herodian period, is it definite.^{10a}

Remarkably, “kritērion” is not recorded in any earlier source in Judeo-Hellenistic literature, e.g., Ben Sira. Only when we come to Philo’s works is it frequently found.^{10b}

On the basis of the non-usage of “kritērion” in Judea at an early period it is difficult to accept that “kriterion” was an early synonym for “Bet Din.” Rather, the early use of “synedrion” in the Apocrypha, e.g., Ben Sira and Maccabees, points to the opinion that “synedrion” seemed to be the more popular word in Judea. Josephus likewise does not use “kritērion” though he speaks often of judgments (*kriseis*);¹¹ he uses however “dikastērion.” Similarly in the Gospels, “kritērion” is not found.^{11a}

3. *Boule — Bouleuterion*¹²

In I Maccabees^{12a} “bouleuterion” often refers to the Roman Senate. IV Maccabees,^{12b} however, uses it as a “court” in the story of the martyrdom of the mother and her seven sons.

Philo has “bouleuterion” in conjunction with “synedrion.”¹³

Josephus uses “boule” in various ways: the Roman Senate,^{13a} local councils imprisoning people for robbery^{13b} and government councils.^{13c} He also refers to the burning of the *bouleuterion* (council house) near the Temple.^{13d}

The association of “boule” with judges may be definitely seen in *Antiquities*^{13e} where Josephus records a letter sent to Cambyses by the enemies of the Jews, asking him to stop the building of the Temple. This is written by the judges (*kritai*) of the boule in Syria and Phoenicia.¹⁴

A different picture of "boule" may be seen in a document of 46 C.E.^{14a} Claudius sent a letter to the magistrates, boule, the people and the whole nation of Jews granting them their request of the holy vestments and the crown belonging to them. He also sanctioned their right to live under their own rule. As known, the vestments of the high priest were usually kept under military guard as a sign of Roman dominance over Judea.¹⁵ However, upon the appeal of Agrippa II, Claudius expressed his regard for "everyone to worship God according to the laws of his own country."¹⁶

"Boule" mentioned here might apply to the administrative body of the Temple over which Agrippa II had charge.¹⁷ This *boule* naturally was interested in securing the holy vestments. It had its seat in the Temple and was near the Xystus,¹⁸ but may also have had control over the city of Jerusalem.^{18a} Therefore, when Florus left the city of Jerusalem,¹⁹ he exacted a promise from the boule, whose membership consisted of those of "greatest eminence in the city,"²⁰ that no innovations or seditious acts would be promoted in his absence.

"Boule"²¹ is also recorded in the instance where Agrippa, upon his return to the city, made a speech dissuading the people from avenging themselves against Florus and Rome. This, too, was the city council.

The "boule" of Tiberius also is mentioned by Josephus.²² Since Galilee was under Josephus' supervision, he established in its main city, Tiberias, a boule not unlike that in Jerusalem.

For the most part, the "boule" mentioned in Josephus was a body functioning during the Revolt. At this time, the boule of Jerusalem was recognized as the leading *synedrion* of the entire state. All revolutionary activities were directed from here.²³ Perhaps in this critical period of the Revolt, in which the priests played a great role, the Temple precincts functioned as the headquarters. This explains "boule" as both a Temple and a city council.

In the Gospels, "boule" as an institution is not mentioned. However, *bouleuteis* (councilman) is found twice — in Mark and in Luke.²⁴ Josephus also mentions the *bouleutai* in the *War*:²⁵ They

collected the tribute from the villages about Jerusalem and temporarily put a stop to the war which was threatening with Rome. Therefore, it could be assumed, from the functions of the councilmen, that the boule was the administrative department of the state.

In tannaitic literature *bouleuten* (בָּלוּטִין) is mentioned:²⁶ "Seven days before the Day of Atonement, the high priest was taken from his own house to the Chamber of *parhedroi* . . . Rabbi Judah called it Chamber of *bouleuten*." It is evident here that these bouleuten were Temple functionaries, thus relating them to the boule of the Temple described by Josephus.

The Palestinian Talmud also records *bouleuteis* as a counsellor.²⁷

Though "boule" is interpreted in various ways, it may be concluded that the boule in Palestine of the Second Commonwealth era was a permanent institution, a city or Temple council.^{27a} Therefore it cannot be identified with the "synedrion" mentioned by Josephus in *Life* 12 as the guiding spirit in the affairs in Jerusalem during the Revolt. This latter body was only the new provisional government after the beginning of hostilities and had no permanence or real authority because of the struggle within its own factions. Nevertheless, the possibility of the application of "boule" to a court^{27b} cannot be denied when we remember its designation for the Areopagus and also the usage made by Philo. Yet, the Bet Din ha-Gadol in Jerusalem was never called *boule*.

4. *Koine*

Josephus often used the term "koine" in his *Life* when speaking of the people of the country²⁸ or those in Jerusalem.²⁹ Scholars³⁰ compare the term (in Hebrew translation) with the talmudic interpretation of *edah*,³¹ and apply it to the democratic government established by the Zealots³² during the Revolt. Others assert³³ that "koine" appertained to the centralization of the three branches of the government — political, religious and judicial — and corresponds to "synedrion" in *Life* 12.

However, it is here believed that "koine" did not definitely refer to an institution. It meant only assembly, congregation, *edah*. Josephus, on answering Justus, aimed to show that he had received

his power to conduct the hostilities in Galilee, from the people as a whole. Therefore he used "koine," though in the historic light he referred to the provisional government created at the beginning of the Revolt.⁸⁴ The general application of "koine" may be also seen in *koinon ton ioudaion* which refers to *heber ha-yehudim*⁸⁵ and *koinon ton iereon* which may apply to the *Bet Din shel kohanim*.

5. *Ekklesia*⁸⁶

"Ekklesia" is a general term for gathering. Thus, *ekklesia megale* is recorded in I Maccabees^{86a} as being convoked by Judah Macabeus and his brothers.⁸⁷ Similarly, Josephus^{87a} tells of Joseph ben Tobias calling an ekklesia. So also the affirmation of Simon the Hasmonean was read before an ekklesia in Jerusalem.^{87b} In the *War*^{87c} Josephus records that those who tore down the golden eagle from the Temple gate were judged at an ekklesia. This gathering may have served as a people's court, similar to the biblical use of *edah*.

6. *Synagoge*

The common translation of *synagogue* for *edah* already shows its general use.⁸⁸ It may apply to any gathering or institution of the different periods in the Second Temple era, like the assembly of Simon the Hasmonean. Josephus, for instance, uses the term with reference to a gathering, by the high priest Joshua and the governor Zerubbabel, of the people at Jerusalem to build the altar.^{88a} He also records that Esther asked Mordecai to gather the Jews in assembly (*eis ekklesion synagagein*).^{88b} He also calls the house of worship "synagogue."^{88c} For our study, however, the distinction between *Bet Keneset* (house of assembly, *synagogue*) and *Bet Din* (judgment hall) is apparent.

7. *Heber*⁸⁹ (חֵבֶר)

The expression *heber* is first found in Hosea 6.9; it denotes a group or organization of priests (*kohanim*).

In Proverbs, however, *bet heber*⁴⁰ presents difficulties. The Septuagint translated it as *oiko koino*, house of gathering or house of society.⁴¹ In this sense "heber" would be synonymous to "koine." Thus *heber ha-kohanim* of Hosea may be akin to *koinon*

ton iereon of I Maccabees. Nevertheless, the nature of the "heber" is not explained in the biblical sources.

The Mishnah speaks of *heber ha-ir*.⁴² The expression is applicable to the idea of any assembly in the city but here, too, one cannot determine the nature of the body from the word itself and thereby relate it to Bet Din. However, the *heber ha-yehudim* of the Hasmonean coins, denoting the democratic Commonwealth,⁴³ may be similar to *koinon ton ioudaion* of I Maccabees.

It is possible that *heber ha-yehudim* may refer to the national council, *heber ha-ir* to the city council, and *haber* to the citizen, "comrade," in opposition to the *am ha-aretz* who had no privileges in governing.⁴⁴

Well knowing that Greek culture was a result of city life, contrasted with the features of the village, one wonders whether the difference between *haber* (citizen of the city) and *am ha-aretz* (farmer) can be interpreted in this light. Its application may thus have been a direct result of the Hellenistic processes in Judea.

8. *Edah* (עֲדָה)

"Edah" is a general term for the ancient public assembly or congregation.^{44a} In the LXX, it is translated as *synagoge*. It is found mostly in the Pentateuch, and particularly in the book of Numbers. Only occasionally is it mentioned in the later books. It is recorded also in Proverbs, 5.14 wherein the Septuagint translates *kahal* as *ekklesia* and *edah* as *synagoge*.

Rabbinically, *edah* has been connected with Sanhedrin in order to establish the antiquity of the institution and its constitutionality as derived from the Torah.⁴⁵ This conclusion has been reached because of the rabbinic interpretation of Numbers 35.24: "The *edah* shall judge and save."⁴⁶

The word *edah*, however, cannot be used to determine the antiquity of the newly found Dead Sea Scrolls. W. H. Brownlee declares: "It may be observed that in Sifra 19a on Leviticus and that in Siphre 41 on Deuteronomy the Biblical "congregation" (same word as employed in DSD v. 1) is declared to be the Sanhedrin. Since the parallel to DSD v. 1, namely viii. 13, employs the word "session" for congregation, the question may well be raised

as to whether the reference is to the Sanhedrin. The Community called itself a “session” when convened for religious discussion (v. 1 8ff).”^{46a} In other words, Brownlee seeks to equate **עָדָה** with **מושב** and thus obtain a reference to the Sanhedrin. This is hardly possible. Firstly, **מושב** (even if it is explained as Yeshiva, “session”) is not at all used for any institution of the Second Commonwealth. *Yeshiva* is first used for the “session” in the days of Rabbi Eleazar ben Azariah, c. 100 C.E. Moreover, the parallel use of **עַוְלָה אֲנָשִׁים** (viii. 13) and **עַדְתָּא אֲנָשִׁים עַוְלָה** (v. 1) in the “Manual of Discipline” Dead Sea Scroll text refers to the sect separating itself merely from evil-doers. The phrases are only synonymous with such as found in the Psalms: **עַדְתָּא מְרֻעִים** (I 1) **מוֹשֵׁב לְזִים** (22.17). Nevertheless, when joined with the phrase **זְקִנִּים** as in Psalm 107.32 or in the Aramaic with **דִּינָא** as in Daniel 7.10, the word **מושב** may be interpreted as Sanhedrin. These latter examples bear the traditional connotation^{46b} and are very much unlike — indeed, diametrically opposed to — the phraseology of **עַוְלָה מְעֻדָּת אֲנָשִׁים** used in the “Manual of Discipline.”

9. Kenishta (כְּנִישְׁתָּא)

In *Megillat Ta'anit*⁴⁷ there seems to be a reference to the Sanhedrin in the notation: “On the 28th day of Tebet the *be'Kenishta* sat in judgment.”

“Kenishta” as used in Aramaic generally applied to a Great Assembly (Keneset ha-Gedolah)⁴⁸ such as that of Ezra or the *synagogue megale* of Simon the Hasmonean. The reading in *Megillat Ta'anit*, dealing with judgment, may refer to the time when the Eighteen Decrees were formulated in the chamber of Hananiah ben Hezekiah ben Goron, about 66 C.E.^{48a} It does not, however, pertain to the traditional Bet Din ha-Gadol, which was then dissolved.⁴⁹

EXCURSUS X

THE RABBINIC CHOICE OF “SANHEDRIN” AS A TRANSLATION OF “BET DIN”

Of all Greek words related to the realm of judgment only “synedrion” was chosen in talmudic usage as a translation of Bet Din;¹ not *dikastērion*, *kritērion* nor *bouleutērion*. Perhaps “bouleuterion” was associated with the Roman Senate and foreign influence or political councils; “kritērion” referred to judging according to positive laws² (*krima*—מִשְׁפָט) and “dikastērion” was applied to judging according to a sense of justice or equity (*dikaios* —צָדֵק). “Sanhedrin” on the other hand, combined both features in Jewish tradition and therefore was best suited.³

One is inclined to believe that Josephus’ use of *kathisan synedrion*⁴ (as in the case of Agrippa’s *synedrion* to permit the Levites to wear priestly garments, contrary to “the paternal laws”⁵) is analogous to the usage of **הוֹשִׁיב בַּד**.⁶ The word or *kathistemi* when used alone, has the connotation of “setting,” but when connected with *synedrion*, it becomes a legal term.⁷

A rabbinic interpretation⁸ demonstrates the interrelationship of the Greek word *synedrion* with the Hebrew אספה (assembly) : דברי חכמים כדרבנות וכמשמרות נטויעים בעלי אספות (קהלת יב, יא) אין אספות אלא סנהדרין כמה דתימר אספה לי שבעים איש (במדבר יא טז). Since “synedrion” held a distinction as a higher court of justice, interpreting the law, as in the Areopagus, it was adopted above all other terms. Thus “Sanhedrin” came to mean the highest court of justice among the Jews—the legislative body in the Gazit Chamber—the traditional Bet Din ha-Gadol.

The exact date of the adoption of the name is uncertain. Kohler thinks it came into popular use under Ptolemaic rule.¹⁰ Thackeray declares that “synedrion” was already in existence in Judea in the later Hasmonean period, i.e., before Pompey.¹¹ Greenwald

notes that it is found for the first time in Simon ben Shattah's day, but this proof is taken only from the late scholion on *Megillat Ta'anit*.¹² Ryle and James assert, “The word ‘synedrion’ was very possibly not in use before the time of Gabinius as applied to the council. But the translator [of the Psalms of Solomon] lived at a time when the term had become generally accepted.”¹³

Probably “Sanhedrin,” as a judicial court, became popular after the complete democratization of the Bet Din by Simon ben Shattah, for it is he who is recognized in talmudic tradition as deeply concerned with legal matters and the administration of justice.

The phrase בֵּית הַמִּשְׁפָּט in the newly found Habakkuk Scroll¹⁴ has prompted scholars¹⁵ to identify it with a Sanhedrin. Thus W. H. Brownlee writes, “The phrase, ‘house of judgment,’ may allude to the Sadducean Sanhedrin (*beth din*) but is given an adverse meaning in Hebrew *beth ham-mishpat* with its connotation ‘house of damnation,’ i.e., ‘doomed house.’” However, though we have בֵּית הַמִּשְׁפָּט in the Bible, אֶלְם הַמִּשְׁפָּט is not even rabbinic. It is very late, perhaps even karaitic, and therefore the Dead Sea Scrolls throw no light on the institution of Sanhedrin.

EXCURSUS XI

THE COMPOSITION AND NATURE OF THE SANHEDRIN

On the basis of the records in Josephus and the Gospels, Blum,¹ Schürer,² and Felten³ maintained that the highest tribunal in Palestine consisted of three groups: (1) the high priests (*archiereis*), (2) scribes (*grammateis*), and (3) elders (*presbyteroi*). These represented the three functions of a “combined” administrative government: (1) ritual (the priesthood), (2) interpretation (the scribes), and (3) executive (the elders). Hence *synedrion*, as revealed in the Greek sources, was a council combining administrative, judicial and religious functions.

A study of these three groups as mentioned in the non-rabbinic sources, however, reveals no proof for the particular form or nature of a combined institution.

The three groups are recorded as follows:

A. In Josephus:—

1. High priests and principal men (*dunatoi*):
War 2.14.8; 2.15.2; 2.15.3; 2.16.2; 2.17.2; 2.17.3; 2.17.5; 2.17.6.
2. Officials (*archontes*): *War* 2.16.1; 2.17.1; 2.21.7.
3. High priests: *War* 2.15.3; 2.15.4; 2.16.3; 5.1.5; 6.9.3.

B. In the Gospels:—

1. High priest, scribes and elders: Matt. 27.41; Mark 11.27; 14.43; 14.53; 15.1; Luke 20.1.
2. High priest and scribes (no elders); Matt. 2.4; 20.18; 21.15; Mark 10.33; 11.18; 14.1; 15.3; Luke 22.2; 23.10.
3. High priests and elders (no scribes): Matt. 21.23; 26.3; 26.47; 27.1.3.12.20; 28.11.12; Acts. 4.23; 23.14; 25.15.
4. High priests and the synedrion: Matt. 16.21; Mark 14.55; Acts. 22.30.

5. Elders, high priests and scribes: Matt. 16.21; Mark 8.31; Luke 9.22.
6. Scribes and high priests (no elders): Luke 20.19.
7. Scribes and elders (no high priests): Matt. 26.57.
8. People (*laon*), elders and scribes: Acts 6.12.
9. High priests and officials: Luke 23.13; 24.20.
10. Officials, elders and scribes: Acts 4.5.

The passages in the Gospels: (Matt. 26.59; Mark 14.55; 15.1; Luke 22.66; John 11.47; Acts 5.21; Acts 22.30) seem to indicate that these three classes of leaders are distinct from *synedrion* (gathering) and not component parts. Similarly, in Josephus, the high priests and men of power are mentioned in the same passages as distinct from the *boule* (council): *War* 2.13.6; *ibid.* 2.16.2.⁴

We conclude that these sources reveal only those who comprised the aristocracy of the Second Commonwealth period. No evidence is found for the component parts of a *synedrion*.

Though we cannot accept the notion of a "combined" *synedrion*, it is to be noted that there were three separate functions in the government represented by three different institutions: (a) the priesthood and the Temple—*Bet Din shel kohanim*; (b) the political government—*boule*; and (c) the interpretation of law and Halakah—the Great Sanhedrin. The distinctions: (a) high priests, (b) elders and (c) scribes, thus fit into this picture of the three departments in the state, each group functioning in its own realm.

EXCURSUS XII

JOSEPHUS' "THEOCRACY"

In *Antiquities*,¹ Josephus remarks: "The Jews dwelt in Jerusalem under a form of government that was aristocratic and at the same time oligarchic. For the high priests were at the head of affairs until the descendants of the Hasmoneans came to rule as kings."

In *Against Apion*² this period is called a "theocracy." Thackeray³ declares that the word was apparently coined by Josephus. In a later book of *Antiquities*,⁴ however, this period is spoken of as a "democratic government." Perhaps the latter reference is to early Hasmonean days, and apparently Josephus confused his sources.

Josephus called the gerousia an aristocracy.⁵ This bears comparison with the later aristocracies recorded by him—that of Gabinius and that of the procurators. Whereas the aristocracy of the gerousia consisted only of priests (a theocracy), that of the procurators consisted of high priests together with elders, and scribes.

Josephus' usage of "oligarchy" for the gerousia is also to be noted. He does not speak of such an oligarchic-aristocracy for the later period.

The reasons for this change can be explained. As a result of the Maccabean Revolt, laymen had gained a voice in the government and elders were chosen from among them. The scribes, too, rose in prestige. Therefore the term "oligarchy," applicable only to the aristocracy of priests, would not be fitting for the later era—the procuratorship. Gabinius' aristocracy likewise must have included laymen (principal men), in addition to priests.

EXCURSUS XIII

THE TRIPARTITE SYSTEM OF GOVERNMENT

The analysis of the nature of the Sanhedrin and the study of its emergence have led to the conclusion that there was a tripartite division in the Jewish government of the Second Commonwealth.¹ This consisted of an executive-administrative body (the kingdom, מלכותה), (2) the ritual hierarchy of the Temple (the priesthood, כהונת), and (3) the halakic domain (the Bet Din, חורה).

In the very early period of the Second Temple these three jurisdictions were vested in the high priest and his gerousia. From 141 B.C.E. on, the division was Ethnarch (or king), high priest and Sanhedrin.²

Many scholars questioned such division of power. Thus L. Finkelstein³ declared:

גם אי אפשר לפשר בין העדויות הנראות זו את זו ולומר שהיו שני בתיהם דינים בשעה שאין שם זכר ורמז לסדר ממשלה כזו לא בדברי חז"ל ולא במקורות אחרים. יתר על כן כל ההשערה של החוקרם זרה לrhoחם של אבותינו שלא הבדילו בין ענייני דת לענייני ממשלה. חכרי בית דין הגדול היו מתעסקים. נראה מהדברי חז"ל הן בענייני מלכות הן בענייני דת.

An examination of the different sources for the study of the Second Commonwealth, however, reveals the existence of such a tripartite system. Philo remarks, "The high priesthood is much superior to the power of a king. . . ."⁴ Now other kings carry rods in their hands as sceptres but my [the biblical ruler—cf. Deut. 17, 19] sceptre is the book of the sequel to the law."¹⁵ Herein, the three categories — high priest, king and book of the law — are noted.

Josephus also reveals the three categories in his description of the administration of justice:⁶ ". . . But if the judges see not how to pronounce upon matters set before them . . . let them send up the case entire to the holy city and let the high priest and the pro-

phet and the gerousia meet and pronounce as they think fit." He notes priest, prophet and gerousia.

Though this text of Josephus is to be considered only as a paraphrase of Deuteronomy,⁷ scholars have given various explanations of it.⁸ D. Hoffmann⁹ believed that it is not archaic but that "priest" and "prophet" refer to the same individual. Similarly S. Belkin writes, "Josephus' use of the term prophet in addition to the term priest may have reference to the additional name for the high priest and this passage suggests that he considered the high priest the head of the Sanhedrin who judged between blood and blood."¹⁰ Belkin's deduction of the presidency of the high priest from this passage is not conclusive;¹¹ he, himself, points out that Josephus' text is merely an interpretation of Deut. 17.8.

Wellhausen¹² believed that *archiereis* is the high priest, "prophet" refers to *grammateis*, and *gerousia* to "presbyteroi." These terms, according to him, reveal the composition of the Sanhedrin in New Testament times.

Though the identification of "gerousia" with presbyteroi (*zek-enim*) is likely,^{12a} it seems that the correct reading of the text should be *gerontes* and not gerousia. This refers to the elders in the administrative *boule*, members of which were the *gerontes* or *presbyteroi*. Similarly, Wellhausen's suggestion that *prophetas* is *grammateis* may be accepted, especially if one follows the targumic rendering of נביא as *מלפין* (teachers)¹³ or (*grammateis*).¹⁴ Wolfson, too, in his *Philo*, interpreted "prophet" in the sense of scholar.¹⁵

On the basis of this suggestion, Josephus' entire passage, if not recognized as academic, may be interpreted as portraying the various systems of final power in the different branches of the government of his time: "priests" refers to the ritual hierarchy, supreme in the Temple; "prophets" to the scribes, *soferim* (*grammateis*), the teachers of the law in the Great Sanhedrin; and *gerontes* (gerousia) to the State Council. Consequently, Josephus, in this most extraordinary passage, pictured the three highest institutions in the government of the Second Commonwealth: (1) the priestly, (2) the halakic, and (3) the executive.¹⁶

A further reference to the tripartite division may be seen in

Josephus' remark,¹⁷ "It was proper that in the city in which was the *Temple* of God and where the *king* had his residence that *judgment* should be given."¹⁸ Again, the three features are noted: Temple, King and Judgment.

Furthermore, speaking of the Pharisees [who were increasing in power in the Sanhedrin of his day], Josephus says: "These [the Pharisees] have so great a power over the multitude, that when they say any thing against the king, or against the high priest, they are presently believed."¹⁹ The Pharisees represented the judicial and Torah-legislative domain; the king, the political; and the high priest, the ritual.

When speaking of John Hyrcanus, Josephus notes that he was esteemed by God as worthy of three privileges: "The government of the nation, the dignity of the high priesthood, and prophecy."²⁰

Though from Josephus' context one might infer that "prophecy" was that of "foretelling the future,"²¹ the term may also be applied to the furtherance of traditional law, since the Mishnah specifically records that John Hyrcanus decreed many rabbinic laws.²² In all, reference is made here to the three categories of jurisdiction in the Hasmonean State.

Accepting this notion of three departments, one can also explain the jurisdiction over the Temple, given to Agrippa by Claudius.^{22a} It was in principle like the power conferred upon Simon the Hasmonean by the Great Assembly. He was to be in charge of the sanctuary and also appoint the priests. Yet, a difference is to be noted. In Simon's case, civil authority was given him, in addition; such power, however, was held by Agrippa II only nominally. In both instances, nevertheless, no inter-departmental activity is evident. These are always separate jurisdictions.

Rabbinic literature also supports this notion of the three-fold system. The phrase:²³ **ב אלו נשאלין באורים ותומים ואין נשאלין אלא מלך** points to the three jurisdictions: (1) the State **מלך** and **בית דין**; (2) the Court **בית דין**; and (3) the priestly power **טהרה ותומים**.²⁴

In the Mishnah Horayot,²⁵ the three categories are also delineated: (1) **מושחה** (*Nshia*) (administrative power); (2) **נשיה** (priesthood); (3) **בית דין** (judicial Court).

That there was a division between the religious and the secular,

הרויגי ביד נכסיין לירושין ²⁶ This demonstrates that there existed a sharp distinction between the secular government (**מלכות**) and the religious authority (**בית דין**).

The later rabbis also emphasized the existence of three crowns: kingdom, priesthood and Torah:²⁷ תניא רבי: ²⁸ Compare similarly: ²⁹ אלעזר בר יעקב אומר זקנים וו סנהדרין שופטיך וו מלך וכחן גודל

Particular evidence for the separation of the various departments of the state may also be found in the peculiar tradition that Simon ben Shattah constructed the Lishkat ha-Gazit.³⁰ This may refer to a definite physical change in the construction of the Chamber at that time when a Pharisaic division occurred in the Great Sanhedrin.³¹ The separation of the *Gazit* (Sanhedrin Chamber) from the *Parhedrin* (priestly council) was designed by Simon ben Shattah to prevent absolute power of the priests in judicial decisions. This was another step in restrictions that had begun with the democratic revolt of the Hasmoneans.³²

EXCURSUS XIV

THE GREAT ASSEMBLY¹

Most of the sources pertaining to the Keneset ha-Gedolah are of Amoraic origin.²

The tannaitic sources for the Second Temple era are very sparse and throw little light on the institution. Bickermann³ notes that the texts often read *anshe keneset ha-gedolah*, “the *men* of the Great Assembly”; this phrase does not refer specifically to any council. He equates בְּנֵי הַגּוֹלָה in Ber. Rabbah 71.3 with a parallel reading אֲנָשִׁים כָּנָסֶת הַגּוֹלָה and declares that those who returned from the Exile to Jerusalem (with Zerubbabel and Ezra) received the name “men of the Great Assembly” because they fulfilled the promise of a Great Assembly of Israel as predicted by the Exilic prophets.⁴

Bickermann’s analysis pertains primarily to the origin of the Great Assembly and cannot serve to deny its later historicity; for there are definite records of actual assemblies in the Second Temple era. S. Zeitlin notes four such Great Assemblies:^{4a}

1. The gathering of Ezra and Nehemiah (*ca.* 444 B.C.E.).
2. The meeting of Simon II with Antiochus III (196 B.C.E.).
3. Simon Hasmonean’s election by the *synagogue megale* (141 B.C.E.).
4. The assemblage of the 28th day of Tebet (65 C.E.).

Upon careful investigation, however, it will be seen that in three of these instances, there is no mention of כָּנָסֶת הַגּוֹלָה or *synagogue megale*. We find that:

1. The “assembly” of Ezra is based on the phrase קָוֵל וַיַּעֲבִירוּ בְּיִהוּדָה וַיַּרְשֻׁלָּם לְכָל בְּנֵי הַגּוֹלָה לְהַקְבִּץ יְרוּשָׁלָם⁵
2. Simon II’s meeting with Antiochus mentions *gerousia*.⁶
3. The “Kenishta” of *Megillat Ta’anit*⁷ might agree historically with *synathroisthentes eis to ieron*.⁸ Here Bacher believed, indeed, that the Kenishta was the Sanhedrin,⁹ but Zeitlin has shown that

the Kenishta refers to the establishment of the provisional government of 65 C.E.¹⁰

Our sources, therefore, establish only one fact — that the שמעון הצדיק of כנסת הגדולה coincides precisely with the *synagogue megale* of Simon the Hasmonean.¹² No other similar parallelism for the Great Assembly exists.

Does *ekklesia* correspond to Keneset ha-Gedolah? The *ekklesia* called by Joseph ben Tobias to uphold the loyalty to the Ptolemies¹³ or the “*ekklesia megale*” convoked by Judas Maccabeus to send help to the Jews in Galilee and Gilead¹⁴ or the *ekklesia* of Jerusalem which confirmed the alliance of friendship with the Spartans¹⁵ may all have been in the realm of a Keneset ha-Gedolah, but no conclusive proof exists. In all of these instances there is evidence only of turning points or crises in Jewish history necessitating a “Great Assembly.” On that basis alone *ekklesia* may be interpreted as a Keneset Gedolah — a convention assembled for a specific purpose.

Identification of Simon the Just as “the Hasmonean” who, at the head of the Keneset ha-Gedolah, in 141 B.C.E., established the Great Sanhedrin prompts disagreement with Finkelstein¹⁶ who writes: מכל הנמסר לנו על הכנסת הגדולה יש להסיק שהיא בית דין בישראלי שמקומה דומה לזו של כת הפרושים בזמנם. הכנסת הגדולה הייתה לפיה זה בית דין של כנסת החסידים. בדיק כמו וועדי הזוגות שהיו בתיהם הדין של הפרושים בזמנ מאוחר

The Great Assembly was not a Bet Din at all. It was a sort of National Convention called together to decide upon a national policy concerning a critical issue of the State. In 141 B.C.E. it was that body which brought forth the establishment of the Hasmonean Commonwealth.

EXCURSUS XV

THE ESHKOLOT

Many opinions have been offered to explain the role of the *Eshkolot*.¹ Geiger interpreted it in the sense of קתוליין, איש כל *katholikoi*.² Löwn suggested its derivation from seal or *segillum*, depicting the seal of authority.³ J. Oppenheim explained the *Eshkolot* as the early teachers who applied the method of interpreting the *Mikra*, which was later replaced by methods of *Midrash* and *Mishnah*, until re-introduced by Rabbi Akiba.⁴ Blum identified them as "les hommes qui ont exerce tous les pouvoirs."⁵ Hoffmann regarded *Eshkolot* as those who dealt only with the study of the law; whereas the *Zugot*, who followed, also had temporal power.⁶

The correct view of the relationships of the *Eshkolot* to the Sanhedrin and to the *Zugot* may be discovered from a close study of the sources. That the opposite of Hoffmann's theory seems to be true may be seen by examining the traditions in the variant readings concerning the *Eshkolot* and the "blemish" (imperfection) which appeared in the *Zugot*:

a) Tos. B.K. 8,13 (362) :

כל אשכולות שעמדו להן לישראל משנת משה ועד שעמד יוסף בן יουזר איש צרדה ויוסי בן יוחנן איש ירושלים ועד שעמד ר' יהודה בן בבא. אפשר ליתן בהן דופי.

b) Tem. 15b:

במתניתא תנא כל אשכולות שעמדו לישראל מימות משה עד שמת יוסף בן יועזר איש צרדה לא היה בהם שום דופי מכאן ואילך היה בהם שום דופי.

c) Yer. Sotah 24a:^{6a}

תני כל הוגות שעמדו משנת משה ועד שעמד יוסף בן יועזר איש צרדה ו يوسف בן יוחנן איש ירושלים אפשר ליתן בהן דופי עד שעמד ר' יהודה בן בבא אפשר ליתן בהן דופי.

We recognize that two *baraitot*: (b) and (c) contradict each other. Therefore, we must consider the Babli text as the correct one, since it is supported by another statement in Temurah 15b:
 ואמר ר' יהודה אמר שמואל כל אשכבות שעמדו להן לישראל מימות משה עד שמת יוסף בן יועזר היו למדין תורה כמשה רבנו מכוא ואילך לא היו למדין תורה כמשה רבנו.

(The phrase **כמשה תורה** shows that there was but one authority and therefore (לא היה בהם שום דופי) The accepted reading, following Tem. 15b, is therefore: **כל אשכבות שעמדו לישראל**^{טב}: מימות משה עד שעמד יוסי בן יווער איש צרצה לא היה בהן שום דופי. מכאן ואילך היה בהן שום דופי.

In this passage the readings עד ימות יוסי or עד שעמד יוסי are correct instead of שמת. This is evident from the talmudic question: **מי אפליג זוזא יוסי בן יווזר גנפיה מפליג פלייג?**⁷ The answer shows that differences in opinion arose in the days of Jose; but עד שעמד יוסי בן יווזר איש צרצה לא היה בזוזא. The “blemish” began with the Zugot.⁸ On the basis of this examination it is to be concluded that any opinion⁹ that the institution of Zugot in the interpretation of the Torah existed long before Jose ben Joezer [ca. 141 B.C.E.] or immediately after the prophetic period of Haggai and Zechariah [ca. 516 B.C.E.] cannot be sustained.

In all, the sources portray the transfer of the power of interpretation of the law from the "combined" *gerousia* to the Great Sanhedrin (which was now only a branch of the government). This is enhanced by a tradition in Yerushalmi Sotah 24a, commenting on Mishnah Sotah 9.9:

"No Eshkol arose till Rabbi Akiba. Were not the Zugot Eshkolot? [A difference is to be noted]. These [the Eshkolot] served as leaders but those [the Zugot] were not the leaders."¹⁰

We deduce from this source that before the period of the Zugot full civil and religious power was in the hands of the government heads (*מָנָטוֹרִים*). They were the teachers (*scholiasts*) as well as the leaders. Such a situation existed only in the gerousia.

With the Zugot (beginning with Jose ben Joezer), however, the religious functions in the State were not, of necessity, com-

bined with the political domain. The Zugot were merely the interpreters of the law for the government and were politically subordinated to the rulers. They had no temporal power. Therefore they did not serve as the heads of the government (אֲשֶׁר שָׂמַחַת פָּרוּמָה).¹⁴

Rabbi Akiba, on the other hand, is again called *Eshkol* (a "combined" authority) because he combined scholarly and political leadership during the Hadrianic period. In this manner he was like the Eshkolot who served in the fully empowered council, the gerousia during the early theocratic period, before 141 B.C.E.

EXCURSUS XVI

SOFERIM AND HAKAMIM

L. Finkelstein identifies the *Soferim* as the professional scribes of the "Society of the Hasideans," and *hakamim* as the scholars not dependent upon their knowledge for a livelihood.¹ The Pharisees regarded the *hakamim* as the bearers of tradition, in opposition to the view held by the Sadducees that the high priests were the tradition-bearers.²

Though Finkelstein's explanation of the position of the *hakamim* in history is acceptable, it is important to note, contrary to accepted views, that the appellation "Soferim" refers in a general sense to the scholars of the Second Temple era. They are thus to be distinguished from the later sages known as "Tannaim," who often used "Soferim" in the Mishnah when referring to their predecessors, i.e. the teachers before 70 C.E.³

The term "dibre soferim" in early rabbinic literature is therefore not to be applied solely to the teachings of the sages of the Persian period. It refers to the sayings and activities of the Rabbis of the *entire* period of the Second Temple. Specifically it may signify the decisions and rules of the members of the halakhic court. Thus the Talmud records that Simon ben Shattah ordained the *Ketubah*,⁴ whereas this very same ordinance is known also as an "edict of the Soferim."⁵

A study of the Mishnah also reveals many instances where *kohanim* are set in opposition to *hakamim*.⁶ This may have begun in Simon ben Shattah's period, for it was at that time that the Pharisaic scholars definitely replaced the Sadducean priests as the authorities in the interpretation of the law.⁷ The phrase ⁸חכמי ישראל mentioned in the ancient story of Alexander Jannai's rift with the Pharisees may indeed be the first instance of such definite use,⁸ seeking to contrast the "sages of Israel" with the "priestly authority" of the Sadducees.

EXCURSUS XVII

SIMON THE JUST IN THE BARAITA OF TRACTATE MEGILLAH

Rabbinovitz in his *Dikduke Soferim* has the following variants:

- 1 שהעמדתי להם (יוחנן בן מתתיהו) כ"ג
 - 2 שהעמדתי להם שמונאי ובנוי
 - 3 שהעמדתי להם שמעון הצדיק ומתתיהו וחספונאי ובנוי
 - 4 שהעמדתי להם שמעון הצדיק ומתתיהו כ"ג וחספונאי ובנוי
 - 5 שהעמדתי להם שמעון הצדיק ומתתיהו בן יוחנן כ"ג וחספונאי ובנוי
 - 6 שהעמדתי להם שמעון הצדיק ומתתיהו ובנוי כ"ג וחספונאי ובנוי
- In *Yalkut Shimoni, Behukotai*, 26 (*Horeb*, ed., p. 427) the reading is simply שהעמדתי להם שמעון הצדיק. It is to be noted particularly that the order of the Hanukkah prayer follows *Soferim XX*, 8.¹

EXCURSUS XVIII

THE CHAIN OF TRADITION

I. IN ABOT I

The first chapter of Abot develops the chain of transmission of Halakah. Some scholars have sought to regard this chapter as a late addition by the Tannaim who desired to enhance their own traditions.¹ Others believe that this chapter ends with Hillel because after him no further mention is made therein of *kē-bel* (כלב), of an actual transmission of the Halakah to his descendants.² Examination of the various phases in this chapter, however, will demonstrate that it is actually a sketch of the history of the Great Sanhedrin from its inception till its dissolution.

It has been shown that Simon the Just in Abot is Simon the Hasmonean who founded the Sanhedrin.³ His maxim, "On three things does the world rest — Torah, worship and upon acts of kindness,"⁴ should be scrutinized from an historical point of view. The term "Torah" as used by him refers to the activity of the halakic supreme court in preserving tradition. "Worship" has reference to the activity of the priests in the Temple, and "acts of kindness" pertains to public welfare, to the functions of the *Heber* in the Commonwealth.⁵ Thus, Simon the Hasmonean stressed the three functions of the tripartite government as newly established in 141 C.E.⁶ and his dictum coincides with the events of his period.

From this interpretation of Abot we may understand its purpose and direction. Abot I introduces the tradition with Moses but is primarily concerned with recording the line of tradition of the Great Sanhedrin from the time of its establishment. Therefore the periods of the Zugot and of the Hillel dynasty are given in detail until the final dissolution of the Sanhedrin is reached, i.e., in the time of Rabban Simon ben Gamaliel I. He is the last

person recorded in Abot I; he lived about 70 C.E.⁷ After the destruction of the Temple, Rabban Johanan ben Zakkai re-established the tradition in Jabneh.

The singularly careful use of the term *kē-bel* may now be noted. It is used for all the bearers of tradition from Moses till the last of the Zugot.⁸ But significantly, it is not used for the Hillelite family⁹ because, unlike the previous instances, the transfer of the tradition was then a natural one, from father to son. Later, however, *kē-bel* is again utilized. This is at the beginning of Chapter II of Abot in specific reference to Rabban Johanan ben Zakkai¹⁰ who "received from Hillel." This is noted because his "reception" was not in the natural line. We know that a few years later the authority in the Academy of Jabneh was restored to Rabban Gamaliel II, a descendant of Hillel. The absence of *kē-bel* for the Hillelite family, therefore, does not prove Finkelstein's¹¹ theory that the present last section in Abot I did not originally belong to that chapter.

In Rabban Johanan ben Zakkai's case *kē-bel* is the last instance of the usage of the formula in Mishnah Abot.^{11a} It may be evidence of the great change that took place in the transmission of the tradition at the time of the destruction of the state. Even without a Gazit Chamber the tradition continued.¹²

It is also interesting to note that the very last head of the Great Sanhedrin concluded the tradition of the halakic Court and temporal State in the manner expressed by the first. At the end of Chapter I in Abot, Rabban Simon ben Gamaliel I declares that "the world rests on three things: Truth, justice and peace."¹³ This passage is similar in thought to the first Simon's declaration of the three bases of the world, though קֶיָם is the variant expression used here instead of יוֹמָם.

The similarity of form is not accidental, even as the choice of fundamentals is not haphazard. The events of the period of 70 C.E. are herein reflected: the halakic supreme court had been dissolved, the priesthood in the Temple destroyed and the Jewish government had fallen to the Romans. However, Simon ben Gamaliel I emphasized that despite the havoc, this was not the end. Although the three original factors of the Jewish state as

depicted by Simon the Just were now lacking, Judaism would still retain the essentials. Though the institutions in themselves were no more in existence, their particular ideals still remained: Justice, **דין** (the function of the halakic court);¹⁴ Truth, **אמת** (the function of the state);¹⁵ and peace, **שלום** (the function of the priesthood).¹⁶ Hence, (instead of using Simon the Just's term **זמן**, signifying transitoriness, Simon ben Gamaliel chose **קיימם** signifying permanence.

The reversal in the order of words in Simon ben Gamaliel's passage is not significant, since the entire purpose is to end with the concept of *shalom*,^{16a} which is not merely peace, but the exemplar of perfection, the *summum bonum*.

In his choice of principles, Rabban Simon ben Gamaliel emphasized the eternal values of the Jewish people at the time of the dissolution of the state whereas Simon the Hasmonean expressed only the national values at the moment of his establishment of the Commonwealth. In this manner, both the first and last heads of the Sanhedrin agreed in their emphasis on the "pillars of the world." The variance in wording is due only to historical circumstances. Above all, their dicta reveal the record of the beginning and end of the Jewish state and the Sanhedrin. Later, Rabban Johanan ben Zakkai began a new era as set forth in Chapter II of Abot. His *kē-bel*, "receiving of the tradition," was thus the important link to the Great Sanhedrin.

2. IN MISHNAH PEAH

In addition to the record in Abot, the rabbinic chain of tradition is emphasized in other sources, particularly in Mishnah Peah.¹⁷ There the Zugot are described as the spiritual heirs of the prophets.¹⁸ It is important that this chronological sequence be re-examined.

The period of prophecy, according to rabbinic concept, ended with Haggai, Zechariah and Malachi, who are regarded as the last of the prophets.¹⁹ Their careers are to be dated as being at the beginning of the Persian period. From that time on, i.e., in the Persian and Greek periods till the establishment of the Sanhedrin, the priests interpreted the law in addition to governing the

state. This epoch was the era of the gerousia.^{19a} Yet, even in this period, major problems were acted upon by representatives in the different Great Assemblies, such as those convened by Ezra and Nehemiah, the meeting of Jaddua and Alexander, and the Assembly of Simon II.²⁰ Significantly, talmudic sources also record that there were "prophets"²¹ in the Great Assembly.

The question rises—Why does Mishnah Peah omit the term "Great Assembly" whereas Mishnah Abot mentions both "prophets" and "Great Assembly?" From Peah one would believe that the Zugot followed immediately after the prophets, whereas from Abot there seems to be an intermediate stage of Great Assemblies.^{21a}

The answer is found in a careful study of the apparent historical links of tradition reviewed in Abot and expressed in the following order: אנשי כנסת הגדולה, נביאים, זקנים. "Elders, prophets, men of the Great Assembly." In other words, the range of Jewish tradition may be subdivided as follows: There was a period in Halakah specifically administered by the "elders"; this was followed by a period of the "prophets" and then by a period of rule by the various "Great Assemblies." The period of the Zugot followed this latter epoch.

The general purpose then was to emphasize that the institution known as the Great Assembly under Simon the Hasmonean conferred the right upon the Zugot — the first leaders of the Sanhedrin — to be the followers of the "prophets." In a similar manner when the priesthood was conferred upon Simon the Hasmonean by the same Great Assembly, it was given to him "till there should arise a faithful prophet."²² By virtue of the edict of the Great Assembly, the Zugot of the Sanhedrin were now supreme in the realm of interpretation of the law; they now continued the unbroken chain from the "prophets."²³

Mishnah Peah, on the other hand, deals only with a record of particular individuals and *not* of periods. It is concerned only with a specific halakah. Hence the Zugot are recorded as having obtained it from the prophets, who knew it as a Mosaic law. In a similar manner, a particular halakah is recorded by Shammai,

in the name of Haggai, the prophet.²⁴ As mentioned in Peah, the term "prophets" in front of "Zugot" refers to their specific activity as teachers of the law.²⁵ We have already seen that *nabi* — prophet is translated in the Targum as *malfin*—teacher.²⁶

The Zugot are the first sages in the Mishnah to be mentioned by specific name, i.e., as individuals with distinct identities. Such individualism was not possessed by those teachers who were the "men in the Great Assembly." Therefore Peah which deals with specific halakah omits "Great Assembly" but records the "Zugot," since these pairs of individuals distinctly follow the prophets who are clearly identified in the Hebrew sources. Thus Peah and Abot are not only parallel accounts based on different principles of chronology, but are also complementary, dove-tailing histories.

EXCURSUS XIX

SIMON BEN SHATTAH

The discussion in the Yerushalmi¹ as to who was the Nasi, Judah ben Tabbai or Simon ben Shattah, may be explained on the basis of party alignment: Judah was a strict constructionist, i.e., the extremist in the Pharisaic party which had gained full control in the Sanhedrin, whereas Simon ben Shattah was a loose constructionist, the leader of the liberal Pharisees. At first Judah ben Tabbai was the Nasi. Later, under Queen Alexandra's rule, Simon ben Shattah became the head, since the liberal group was now in the majority. Judah ben Tabbai at that time became the Ab Bet Din or minority leader.²

This reversal in the holding of office thus explains the different points of view of Simon ben Shattah and Judah ben Tabbai, as noted in the Makkot 5b story³ pertaining to the punishment of "alibi" witnesses. As narrated, Judah ben Tabbai's opinion became subordinate to that of Simon ben Shattah when the latter assumed the position of Nasi. Perhaps, the first (and conservative) opinion recorded there in the name of Judah ben Tabbai is that which was rendered when he was still Nasi; nothing is given in his name as Ab Bet Din later.

In like manner, no decision or halakic opinion is recorded in the name of Abtalion—the Ab Bet Din.⁴ Similarly, nothing is known of Menahem's halakah. Minority opinions begin to appear on record only with Shammai, for at that time Pharisaism definitely prevailed, with the growth of the two schools of thought.

It is probable that the phrase in *Megillat Ta'anit* recording the removal of the book of decrees⁵ refers to this period of Simon ben Shattah's power over the conservative group and the Sadduceans. It was the beginning of general enactment of *takkanot*, in distinction to the issuance of *gezerot*.⁶ The early Zugot, indeed, had issued jointly their *gezerot* (decrees). *Takkanot*, however, which are not

mere decrees, but rather enactments based on the interpretation of the law came into force only when the Sanhedrin was guided by the "flexible constructionists" in law. Hence, only after Simon ben Shattah became Nasi were the various *takkanot* or modifications of law recorded in the Talmud, such as *ketubah*, universal education, *prosbul* and others.

Simon ben Shattah's name is often associated with legal matters, particularly in connection with the administration of justice.⁶ The Talmud⁷ connects the trial of Alexander Jannai with the name of Simon ben Shattah.⁸ Similarly, the record of his "hanging eighty witches,"⁹ though it contains legendary elements, confirms the notion that Simon ben Shattah participated in matters of judgment. One may correlate this extraordinary judicial activity with the fact of the rise in power of the liberal, democratic group in the Lishkat ha-Gazit.^{9a}

Another record of Simon's activity is found in the story of his association with Honi, the rain-maker.¹⁰ G. F. Moore¹¹ thinks that this rabbinical reference is not incompatible with the rain-making prophet referred to in Josephus.¹² Though the incident itself may be dismissed as legendary, there is still in it that kernel of truth which demonstrates that matters of religious-economic welfare of the community, such as prayer for rain, were also among the functions of the Sanhedrin to engage the special interest of the Nasi.

EXCURSUS XX

AKABIAH BEN MAHALALEL

The date of Akabiah ben Mahalalel has always been difficult to ascertain.¹ Though many think that he belonged to the period of Jabneh, it seems that the evidence points to a much earlier time of activity.² The absence of the title "rabbi" for Akabiah suggests his period to have been before 70 C.E. This assignment of date may be corroborated from the fact that in the testament to his son the word *makom* (מָקוֹם) is omitted in some manuscripts.³ Similarly the expression בָּרוּךְ הַמָּקוֹם בָּרוּךְ הוּא, in the Middot 5.4 text dealing with the examination of the priests by the Great Sanhedrin, does not show the usage of the word *makom* in Temple days. In the Munich manuscript the entire expression is not found. "Makom," as an appellation for God, was introduced only after the destruction of the Second Temple.⁴

Akabiah was offered the position of Ab Bet Din. The date of this offer may have been during the period of Menahem, Shammai's predecessor,^{4a} and therefore still in the period of the Zugot.⁵ Thus we may initially understand the offer being made then;⁶ it could not be in a later period for there was no Ab Bet Din from Hillel's time on until Simon ben Gamaliel II.⁷ However, Akabiah's conservative opinions, more extreme than even those of Shammai, could not bring him into the same Sanhedrin with the liberal Hillel. Akabiah's existence, then, must be placed at an earlier period, following Shemaiah and Abtalion (whose conduct of the *sotah* ceremony he repudiates) or, in other words, in the time of the Zugot.

EXCURSUS XXI

SHAMMAI AND BET SHAMMAI CONSERVATIVE AND MINORITY OPINIONS

Eduyot I, 1 and 2 mention the name of Shammai before Hillel. So also in the Babylonian text of Hagigah 2.2. The commentators to this Mishnah quote Tosafot Hagigah 16a s.v. שנים מזוגות : ואל תחמה על הא דחוшиб שמא מymi הילל והילל נשיא לכ"ע. איך לא למייר בהיות כי ג' מזוגות הראשונים שאמרו שלא לסתוך היו נשיים ושמאי סבר בוחרתין נקט ליה בראשונה.

However, the Palestinian Mishnah Hagigah records Hillel first. This is correct since the Nesi'im are precedent in Mishnah Hagigah as well as in Abot.¹

Generally, when the conservative opinion is mentioned in an halakah, it is recorded first. Therefore, Tosefta Hagigah 2.8 (235) has **משרבו תלמידי שמאי הילל**. So also Eduyot I, 1 and 2 mention the conservative opinion of Shammai first. Eduyot 1.3, however, records the name of Hillel first because it is he who quotes the older tradition **רבו בלשון שחivist**.

Likewise, the conservative opinion of Bet Shammai generally precedes that of Bet Hillel in the text of the Mishnah. However, in Sukkah 3.9, Bet Shammai is mentioned after Bet Hillel. R. Yom Tov Lippmann Heller therefore significantly remarks, *al loc.*, ולפי שב"ש באו להוסיף על דברי בית הילל סדרם אחריהם וכן במשנה ה' פ"ד דגיטין שבאו ביש להшиб על דברי ביה משאיכ' בשאר דוכתי בכל זה נאמרא.

Interestingly, the Talmud,^{8a} in the name of R. Aba quoting Samuel, explains the precedence of Bet Shammai to Bet Hillel as due to the latter's humility:^{8b}

מפני מה זכו ביה לקבוע הלכה כמותן מפני שינוי ועולבין היו ושוניין. דבריהם ודברי ב"ש ולא זאת שמקדים דברי ב"ש לדברי

This may be regarded as an exemplary homily on virtue and

humility but it does not take into consideration the respective positions of the two schools of thought.

L. Finkelstein in his interpretation of the two schools of thought regards the Bet Shammai as those of the priestly group or those supporting the priests.⁴ This explanation is not necessarily so. The fundamental distinction is that the Bet Shammai followed the conservative direction in the interpretation of the law. Hence they are generally recorded first.

EXCURSUS XXII

THE KING AND THE HIGH PRIEST IN THE SANHEDRIN

In ancient days, the act of judging was a royal prerogative.¹ Hence in Jewish tradition the king is depicted as sitting and judging with the Sefer Torah in his hand.² Probably such a picture fits the biblical period, as in the cases of David, Absalom or Solomon.

The talmudic reason for the exclusion of a king from the judicial bench is based on the legend of Simon ben Shattah seeking to judge Alexander Jannai.³ The king's autocratic power might lead to a perversion of justice. Historically, however, the reference is believed to apply to Herod's trial.⁴ Before 47 B.C.E., most probably, the law did not forbid kings in the Sanhedrin.⁵ This view is substantiated by the fact that the various explanatory references to the king's place deal only with his "being judged" by a court, but there is no limitation of his own "judicial powers."⁶

In biblical days the king actually headed the court of justice. During the period of the Second Commonwealth, especially from Hasmonean days on, because of the democratic wave, the judicial branch was separated from the executive body of the state. Since in that period the autocratic king was the State, he had no place in the halakic Great Sanhedrin, so that he could not sway its halakic decision.^{6a} The high priest, however, was never recognized by the Great Sanhedrin and especially by the Pharisees as head of the Jewish state. He was, as in Agrippa's time, only a Roman official or agent in the state. In the eyes of later Jewish law, the high priest possessed merely ritual functions in the Temple. According to the Pharisees the crown really belonged to a scion of the House of David. Therefore within the Sanhedrin proper the high priest would be like any ordinary judge. He was only an emissary of the Bet Din where religious matters were involved.⁷

Some scholars, wishing to explain the Tosefta⁸ pertaining to the appointment of the high priest and king by the Court, believe that

it refers to the appointment by the Sanhedrin of Simon the Hasmonean as ruler (*hegemon*) and high priest.⁹ However, the words, “king” and “high priest,” as used in the Tosefta are separate terms and do not refer to the same person. Furthermore, “synedrion” is not mentioned in I Maccabees. Only “synagoge megale” is recorded.

To connect this Tosefta passage with the historic appointment of priests during the period of the Revolt of 66 C.E. is also difficult. As narrated by Josephus, the choice of the high priest was made then through lottery.¹⁰ Besides, Josephus’ narrative already refers to the period after the Sanhedrin’s dissolution in 66 C.E.

Other scholars suggested that the Tosefta passage pertains to the supervision of the king and high priest in ritual matters. The incident of Agrippa’s reading of the Torah¹¹ and the control over the high priest on the Day of Atonement¹² are regarded as specific instances of such supervision. However, such a singular interpretation is unnecessary, for the supervision over officials falls naturally into the category of Jewish law generally directed by the supreme court. It is well known, from Josephus and the Talmud, that the Sanhedrin dictated all ritual matters for the king and the high priest.¹³

EXCURSUS XXIII

“NASI” AND “AB BET DIN”

G. F. Moore suggested that the “Nasi” title was not held by anyone before Gamaliel II.¹ Albeck believed that it was first given to Hillel and his sons.² L. Finkelstein suggested³ that the title was adopted only from Hillel’s time on and that prior to this only “Resh Keneset” was used. This view however cannot be substantiated unless we accept S. Zeitlin’s emendation to “Reshe Keneset,”⁴ relative to Simon the Just in Abot. Nevertheless, we do not find “Resh Keneset” applied to the earlier heads of the Sanhedrin.⁵

Most probably the title “Nasi” became prominent only after the strengthening of Hillel’s leadership and especially when there was no Ab Bet Din during his family’s domination of the Sanhedrin. When the Roman Government recognized the spiritual head, the Patriarch of the Jews, as the leader of the nation the title became very significant.⁶ Thus Rabbi Judah ha-Nasi possessed it.

Relying on the use of “Ab” in the Books of Samuel⁷ and Kings,⁸ K. Kohler⁹ suggested that Ab Bet Din meant the spiritual leader, and Nasi, the political head. However, the biblical usage of “Ab” is very indefinite for purposes of conclusive evidence.

Kohler further believed¹⁰ that Jose ben Joezer was called Ab Bet Din since he was known as “the father of Jews,” according to II Maccabees.¹¹ However, the reading is only “Razis, one of the elders of Jerusalem” and hence cannot refer to Jose of Zeredah.

The view held by many that Rabban Johannan ben Zakkai was called Nasi is also difficult to prove. Rabban Johannan ben Zakkai is praised as “the father of wisdom, the father of coming generations,”^{11a} who expounded in the shadow of the *Hekal* of the Temple.¹² He is never called Nasi; only *Rabban* is used with his name.^{12a} However, the official title in the Academy of Jabneh may

have been "Rosh Bet Din." Thus, Maimonides¹⁸ maintains that Rosh Bet Din is synonymous with Nasi.¹⁴

In the last days of Jerusalem, the position of co-leader may have been re-established as in the days of the Zugot; this is the office Rabban Johanan ben Zakkai held. Rabban Simon ben Gamaliel was then occupied with the immediate problems of the War against the Romans.¹⁵ Hence, Rabban Johanan ben Zakkai may have served as head of the religious court. This opinion is based on the reliability of the Midrash ha-Gadol to Deut. 26.13,¹⁶ which speaks of the letter Rabban Johanan ben Zakkai sent jointly with the Nasi, Rabban Simon ben Gamaliel I, to the diaspora concerning the tithe.

While Kaminka¹⁷ and Allon¹⁸ suspect the authenticity of the Midrash, Büchler¹⁹ and Klein²⁰ accept the source. [Parenthetically, it is to be noticed that this Midrash is similar to the letter pertaining to the tithe contributions which was sent by Rabban Gamaliel and the elders, as is recorded in the Tosefta.²¹ Hoffmann²² and Z. Chayes, for various reasons, declare the Tosefta letter as belonging to Rabban Gamaliel I. Zeitlin,²³ contrarily, refers it to Rabban Gamaliel II. The Tosafot²⁴ associate it with the dismissal of Rabban Gamaliel II, whereas Z. Chayes²⁵ explains it as dealing with the intercalation of the month by Rabban Gamaliel I.] Despite the association of Rabban Johanan ben Zakkai with Rabban Simon ben Gamaliel in the Midrash source there is no proof that Rabban Johanan ben Zakkai was the Ab Bet Din in the last decades of the Second Temple, as held by Finkelstein.²⁶ The title is lacking there; only later was Johanan ben Zakkai called *Rabban*, even though he was even then not a Nasi — only an interim official.

There is also no evidence that Rabbi Zadok was an Ab Bet Din. The Tosefta²⁷ and Yerushalmi²⁸ only mention his seating place near Rabban Gamaliel in Jabneh.²⁹

Utilizing a talmudic query about Rabbi Joshua ben Hananiah,³⁰ L. Finkelstein³¹ believes that he was an Ab Bet Din. Indeed, Sherira Gaon had first suggested it,³² but, in fact, the query and the answer are only Amoraic comment,^{32a} perhaps of the talmudic redactor. From the discussion it can only be inferred that the

Amoraim, too, recognized that only within the court proper did the official bear the title "Ab Bet Din," but not outside of it. This situation applied also to the use of the title "Nasi" before 70 C.E.

Albeck's view⁸³ that Rabbi Joshua, instead of holding a position in Jabneh, headed his own tribunal and was called its Ab Bet Din, seems more plausible. The view that Rabbi Joshua was a Nasi after Rabban Gamaliel's death, as inferred⁸⁴ from Hadrian's letter to Servianus,⁸⁵ is also very doubtful. The Patriarchate was an hereditary position and Rabban Simon ben Gamaliel II legitimately obtained it after his father's death.

After the destruction of the Second Temple the Nasi was the virtual head of the Jewish government. As patriarch he served as the representative of the Jewish people to the Romans. The Ab Bet Din, when such position was re-established, in Rabban Simon ben Gamaliel II's day,⁸⁶ may have devoted himself to the internal problems of the court. The position of Hakam, added later, served as a further check upon the prestige and power of the Nasi in his ritual decisions. A triple leadership does not at all fit into the picture of the period of the halakic Sanhedrin of the epoch of the Second Temple and especially of its constitution a few years before 70 C.E.

G. Allon⁸⁷ sought to prove that R. Tarfon was the head (if not the Nasi) of the Court in the Hadrianic period on the basis of the expressions רָבֵן שֶׁל כָּל יִשְׂרָאֵל אֲבִיהוֹן שֶׁל כָּל יִשְׂרָאֵל as applied to the sage. He found corroboration of this opinion in the phrase רָبֵי טַרְפָּן הַזּוֹקְנִים בָּלוֹד. Nevertheless it is here believed that these expressions merely indicate R. Tarfon's place of importance among the scholars in Lud and the honor given to him; these do not portray any official position as president of the Court. Bet Din is not been mentioned here.

EXCURSUS XXIV

THE MUFLA

Maimonides¹ and Moses of Coucy² regarded the Mufla as the Nasi.³ Tosafot⁴ explained it as Ab Bet Din. Guttmann⁵ believed that Ab Bet Din, Rosh Bet Din and Mufla b'Bet Din were synonymous terms. Reifmann⁶ thought that Ab Bet Din referred to the court of seventy-one, Mufla to the lower court of twenty-three, and Rosh Bet Din to a court of three. According to Hoffmann⁷ the Mufla was also called Rosh Bet Din.⁸

If the expression **מִלְבָד** is interpreted as "to speak forth" or "utter clearly,"^{8a} it may be allied with the activities of the Muflaim who were the two expert functionaries of a Lower Court.⁹ Derived from the root "to speak forth," the Mufla may be considered as the "Speaker in a Bet Din." Semantically, the term might be akin to the Greek *prophetas*, speaker, announcer, and the rabbinic Mufla may thus be considered a successor to the biblical prophet in the sense of "speaking forth" the tradition. On the basis of the interpretation of *nabi* as "one who is called by God,"¹⁰ we might interpret the term "prophet" in Josephus' famous passage¹¹ concerning the exercise of justice, as referring to the judge—the Mufla.¹²

EXCURSUS XXV

THE "SEVENTY-TWO" IN JABNEH

The tradition of seventy-two members in Jabneh is noted by Ben Azzai.¹ L. Finkelstein explains this number as meaning to "distinguish the conclave from the Sanhedrin which it superseded but could not replace."² He thinks that the original number had been thirty-two, now increased to seventy-two. Later thirteen were added to make eighty-five equal to the traditional number of the Great Assembly.³ The reasons for such changes, however, are not explained by him. A. Büchler^{3a} also believed that the "eighty-five" refers to the elders in Jabneh under Rabban Gamaliel.⁴

The number "seventy-two" was perhaps based on earlier traditions. Thus it is recorded that the choice of seventy elders in the days of Moses was from seventy-two (six lots for each tribe and two blanks).⁵ Similar to this is the tradition about the choice of the seventy-two elders who translated the Bible into Greek.⁶ S. Schreier⁷ believed, however, that "seventy-two" pertained to the old Sanhedrin, but this cannot be accepted, for no source corroborates it. We only know that it is used specifically by Ben Azzai when speaking of Jabneh under Rabbi Eleazar ben Azariah.

M. Higger⁸ also sought to prove from Midrashic sources that the Sanhedrin (from the days of Moses) consisted of seventy-two members, the additional one (the seventy-second) having no voice in the proceedings. Only in Rabbi Eleazar ben Azariah's day did the seventy-second member gain active membership. His proof is from the Mekilta which notes that Aaron and Moses were added to the seventy elders.⁹ This evidence is untenable because immediately following it we read of the addition of the names of Nadab and Abihu.¹⁰ This would show a total of seventy-four! The biblical text therefore refers only to leadership in the desert community

under Moses, as noted later in the same Mekilta;¹¹ it does not bear on any Sanhedrin of post-biblical days.

Higger's proof from the Midrash¹² that there were seventy-two judges (including God) who judged Adam and Eve (as derived from the seventy-one times that God's name is mentioned in the first chapters of Genesis) is also homiletical exposition. The commentaries (*ad loc.*) question the exact number. Likewise the proof brought from general Jewish literature mentioning the twelve tribes or from the *Letter of Aristeas* noting the total of seventy-two (six from each tribe) is not of historic value, since these sources are only haggadic dicta, for there were no tribes in the Second Temple period.

There is no evidence for more than the traditional number of seventy or seventy-one in the Great Sanhedrin, despite G. Allon's suggestion.¹³ To declare that the active number in the body was *seventy*, whereas at times, because of the attendance of scholars from their local courts, the number became eighty-five or even more than that, may apply to situations in Lud or Jabneh after 70 C.E.,¹⁴ but does not fit into the picture of the period of the Second Temple. Then the actual quorum was twenty-three with the traditional maximum of seventy.¹⁵

EXCURSUS XXVI

RABBI ELEAZAR BEN AZARIAH—NASI OR AB BET DIN?

Did Rabbi Eleazar ben Azariah become a Nasi, i.e., the head of the Jewish community? Though this is the opinion of many scholars, it seems that at that time (*ca.* 100 C.E.) the position was retained by Rabban Gamaliel II as the hereditary prerogative of the House of Hillel.¹ The entire controversy of the sages in Jabneh pertained only to the position of head of the Academy. That is, Rabban Gamaliel was deposed from Academy leadership but still retained his office as head (Nasi) of the Jewish community. Thus, though he remained the Nasi he was now regarded only as an ordinary member of that same deliberative body (*Methivta*) over which he had previously presided. The position of presiding officer of the sessions was now given to Rabbi Eleazar ben Azariah.

Both Babli^{1a} and Yerushalmi^{1b} stress this unusual change, in their respective use of the terms *Methivta* and *Yeshiva*, emphasizing thereby that the problem only revolved about the conflict over the leadership in the legislative body. Though the Babylonian Talmud^{1c} implies that the position also involved "pleading before the Caesar, the Roman emperor" (a fact which reveals the Palestinian origin of the story, since "Caesar" would not refer to Babylonian origins), the Yerushalmi itself does not record such item. Apparently the text of the Yerushalmi is of greater accuracy, since it lists the same qualities for the position as does the Babli and yet limits the controversy to the matter of the presidium in the Academy.^{1d}

The Babli also makes special mention of the fact that even with Rabbi Eleazar ben Azariah's appointment, Rabban Gamaliel continued as a member of the "sessions." He did not stay away from the house of study even for one hour.² This corroborates the notion that the whole controversy bore on the question of the presidency of the Bet ha-Midrash or academic "sessions."

Rabbi Joshua's remarks to Rabban Gamaliel concerning leadership (*parnes*) on the occasion of the latter's visit also shows that Rabban Gamaliel was still regarded as Nasi. The term *parnes* refers to leadership of a community and not to an academy.⁸

The query put to Rabbi Eleazar whether he cared to be Resh Methivta,⁴ also evidences that Rabban Gamaliel was not deposed from his position as Nasi but that the entire controversy pertained to the presidency in the Academy. Likewise the Yerushalmi declares that Rabbi Eleazar was appointed to the *Yeshiva* (sessions).⁵ Those sources thus show that the current title was that of Resh Methivta or Rosh Yeshiva and not Ab Bet Din.

With the establishment of the new office of Resh Methivta, Rabbi Eleazar vacated his own seat in the Academy to occupy the new one. His former place was now filled by a new member in accordance with the procedure of the body.⁶ Therefore the new number in the body became seventy-two. It is to this event that Ben Azzai alludes⁷ in his tradition of "that day."

After the reconciliation of Rabban Gamaliel and his contemporaries, Rabbi Eleazar did not lose the position of Resh Methivta.⁸ A new arrangement had to be made, for it was still realized that the office of presiding officer in the Academy (which in earlier days had been the prerogative of the House of Hillel and really belonged to the Nasi) could not rightfully be taken away from Rabban Gamaliel. Nevertheless, the controversy had also demonstrated that the positions of Nasi and Resh Methivta were not one and the same. Hence, to solve the dilemma, a further innovation was effected. It was arranged that the Nasi, Rabban Gamaliel, serve as presiding head of the Academy three weeks in the month, whereas Rabbi Eleazar served as its head for one week.⁹ But a permanent position of Ab Bet Din, to be occupied by only one man, was not instituted.

Relying on this talmudic discussion, one realizes that the patriarchate retained its eminence in 100 C.E. and that there was no separate Ab Bet Din then. Only dual leadership now existed in the Academy.

אך על פי כן לא הורידו אותו מגדולתו אלא מין אותו אב"ד Though the Yerushalmi reading: *אך על פי כן לא הורידו אותו מגדולתו אלא מין אותו אב"ד* apparently shows that Rabbi Eleazar

ben Azariah was distinctly appointed as an Ab Bet Din, the text does not stand in the face of examination, since the Babylonian Talmud does not mention the title "Ab Bet Din" for Rabbi Eleazar. To reconcile the different readings in the sources, it was suggested by Louis Ginzberg¹⁰ that the correct reading in the Yerushalmi is מיט אוחו אחד בראכע. Thereby, the Yerushalmi is in conformity with the Babli: Rabbi Eleazar ben Azariah was the head once in four weeks, since אב"ד does not read "Ab Bet Din" but is א' בד' "once in four weeks." The corresponding Yerushalmi phrase ומיינ ראב"ע בישיבה means appointing him or conferring upon him the authority as head of the "session" or deliberative body, together with Rabban Gamaliel.¹¹ His position was that of an academic leader.¹²

Halevy¹³ regarded ומיינ אוחו אב"ד as a gloss, recognizing that this position would have been a demotion for Rabbi Eleazar because he was previously a Nasi. This opinion, however, is unhistorical, for Rabbi Eleazar ben Azariah never became a Nasi.¹⁴ This office rightly belonged only to the Davidic-Hillelite dynasty.¹⁵

EXCURSUS XXVII

THE SEMANTICS OF "DECISION"

1. "JUDGMENT" IN JEWISH TERMINOLOGY

גזר דין, פסק דין, חיתוך דין are always used when referring to "judgments" or "rendering decision."¹

גזר

- א.פ' נחתם לו גזר דין.
וועבדין לו גזר דין.
M.K. 3.3: גורת ב'ד.
גורות ב'ד, אילו גורי דין:
B.K. 5a: תבריה ר'ע לגזיזה.

פסק

- כ.י אתי פסקא זדיןא בידי:
פסקין מזונות לאשת איש.

חתך

- ויבאו כל שרי מלך בבבל וישבו:
בשער התוך (ירמיה לט) — שם חותכין את ההלכה
מנין לדין שיעוד בדין שהוא מרומה שלא יאמר הויל Sheb. 30b:
והעדים מעדיםacha אחותנו והוא קולר תלוי בצוואר עדים.
אילו התורה חותכה:
שכל דברי מלכות נחתcin על פיו.

ויקח לו את כל אלה ויבחר אותם בתוך ויתמן איש:
בתוך לקראת רעהו. ר' ור'ג. ר' אמר שרי עז הראה לו. על דעתיה דר' כתדרין דין לקבל כתדרין דין. ר' נחמי אמר שרי ישראל הראה לו על

דעתיה דריינ שם היו סנהדרי גזולה של ישראל יושבת וחותמת [לשון מת'כ: וחותכת דיןיהם גרטינן ודרש ויבתר לשון חתיכות דין].

Sanh. 103a: **ויבאו כל שרי מלך בבל... וישבו בשער הtower איר יונן** משומן **רשבבי** שמחთcin בו הלוטה.

מקום המשפט שם הרשות ראי'א מקום שסנהדרי גזולה יושבת וחותכת דיןיהם של ישראל.

These expressions are strangely akin to the word "decision" derived from the Latin *de caedo*, i.e., to "cut off." The basic similarity in lingual use is interesting, for the very words, **חיתוך**, פסק, גזע mean "cutting" or "decision."²

2. LISHKAT HA-GAZIT — CHAMBER OF DECISIONS

It may be postulated that since the root גזע means cutting, the Rabbis connected the word in a later period with Lishkat ha-Gazit, though it is of biblical origin. Hence the translation of Lishkat ha-Gazit as a "Chamber of Hewn Stone" does not fully express the tradition,^{2a} for "gazit" is not an abstract noun but rather a qualifying adjective. The name should be **לשכת אבן הגזיות**. The Tosefta has **לשכת הגזיז**.^{2b} More acceptable translation perhaps would be "Chamber of Decisions." The idea of גזע as "final decision" is also evident in a Midrashic use in *Abot d'Rabbi Nathan* which regards the scholar who gives a decisive and clear-cut answer as the Lishkat ha-Gazit, possessing only one source (or mouth) of tradition.³

3. THE KERETT U-PELETI IN RABBINIC TRADITION

Jewish tradition used the terms כרתוי ופלתי as referring, metaphorically, to the Sanhedrin: "They were called *Kereti* because they cut out their deeds. They were called *Peleti* because their words were carefully uttered."⁴ In these two expressions we find the affinity to the Sanhedrin:

- 1) The decisions or "cutting out," גזע, כרתות,
- 2) The utterance, as by the Mufla.

4. THE BENE BATHYRA — AN OPPOSITION GROUP

The name *Bene Bathyra*⁵ or *zikne* (Elders of) *Bathyra*⁶ likewise may be a title for an “opposition group in matters of law” based on the words בָתֵר, פָתַח to *cut* or *decide*. Hence one can understand why the title “Ben Bathyra” is used for rabbis of different eras, and is not limited to the contemporaries of Hillel. Interestingly, the *Tosefta*⁷ omits “Bathyra” but uses the expression “The whole Azarah assembled against him,” signifying thereby “opposition” or “dissent.”

EXCURSUS XXVIII

THE PARHEDRIN—BET DIN SHEL KOHANIM

1. THE NAME OF THE PRIESTLY CHAMBER

Many scholars regarded the *parhedrin*, mentioned in Tractate Yoma, as the heads of the Jerusalem council which supervised all matters of the city. G. Allon believed that Herod abolished the Great Sanhedrin and in its place established the (Hellenistic) parhedrin as a local institution.¹ After Herod's death and the deposition of Archalaeus this body, with Hellenistic features, was restored to become again a national council.

This assumption cannot be accepted because, as Allon himself pointed out, the national character of the Jerusalem body refers only to the last days of Jerusalem, to the period of the war. Hence one cannot regard the parhedrin as an executive council. It was only the high priest's council (*Lishkat Kohen Gadol*) identical with *Lishkat ha-Etz*.²

Allon sought also to disprove the views of medieval rabbinic authorities³ and of modern scholars^{3a} that *Lishkat Parhedrin* was *Lishkat Kohen-Gadol*. He declared that it is unseemly that Abba Saul would call the same chamber by two names: *Lishkat Kohen Gadol* in Mishnah Middot and *Lishkat Bouleuten* in Yerushalmi Yoma.

This discrepancy is easily solved. In Middot, Abba Saul explains the character of *Lishkat ha-Etz* in response to Rabbi Eleazar ben Jacob's remark "I forgot its original use." He points out that it was the high priest's chamber. In Yerushalmi Yoma, however, Abba Saul also points out the etymology of the word.⁴ The original name of the high priest's chamber was הַכָּנוֹת (counsel). It was translated in Greek—"boule"—and Hebraized, בְּלֹוֹטִין. Later, the name was changed to פְּרַהֲדָרִין⁵ which Kohut, Krauss and Jastrow in their Talmudic dictionaries rendered as *parhedroi*, "assessors" and

Loewe,⁶ as *proedroi*, "heads." Interestingly the Yerushalmi itself added an explanation of the new name: פְּרָאִידָּה — מַילָּא עֲבִידָא. Of this, various interpretations are given. Lieberman:⁷ *parelontes*, trespassers, מַילָּא עֲבִירָא; Oestersetzer:⁸ *proairetoi*, selectees, מַילָּא עֲבִידָא; *Mi la abida*; Allon:^{8a} *proirateuontes*, proxies; (served as substitute); Brand:⁹ *prodotes*, traitor, מַילָּי עֲבִידָא (doing wrong).

One can detect therefore in the Yerushalmi's comment a description of the degradation of the priestly court: from *boule* (council) to *proedroi* (heads, at the circus or theatre) with the shameful meaning of פְּרָאִידָּה as interpreted by the different scholars.

Bacher thought that the parhedroi were the first "ten" in the Sanhedrin.¹⁰ However, as evidenced in Yoma 8b, the "ten" refers distinctly to the priestly caste, and not to the institution of Sanhedrin.

2. GAZIT-STONE AND ETZ-WOOD

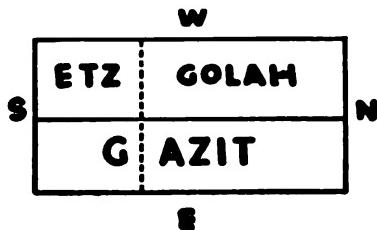
H. Danby¹¹ identified the priestly chamber as the "House of Stone" to which the high priest was conducted for the performance of the red heifer ceremony.¹² This cannot be accepted once we recognize, as even the rabbinic commentators to the Mishnah¹³ point out, that the ceremony of the burning of the red heifer was done with stone utensils, whereas the service of the high priest on the Day of Atonement could be accomplished even with wood utensils. Hence the former place of separation was called *Bet ha-eben* (of stone), and the latter place of isolation was known as *Lishkat ha-etz* (of wood). Therefore, they are not at all identical. Hollis¹⁴ and Lightfoot¹⁵ explained the name *Lishkat ha-Etz* as designating the place where wood was kept. Holtzman¹⁶ suggested that it was constructed of wood and he contrasted this with the Chamber of Hewn Stone.¹⁷

All of these views are side-tracked when we recognize, that originally the priests were the state "counsellors." Hence the explanation of the name הַעֲצָה (boule-council) definitely befits their work. This may also corroborate the traditions in *Sefer Yuhasin*¹⁸ that Simon ben Shattah built the *Gazit* (Decision) Chamber [to

separate it from the priestly section]. Until his time the priests—and not the Pharisaic scribes — dominated in the Sanhedrin.

3. A DESCRIPTION OF MIDDOT V.4

The Mishnah speaks of the *Etz* Chamber as being near the *Golah* and *Gazit* chambers. Since the *Etz* Chamber was also the high priest's residence, it extended into non-sacred territory because of its secular use. The *Golah*, to its right (north), however, was on hallowed ground because of its sacred use. Both of these chambers were more sanctified (and westerly) than the *Gazit* and, therefore, closer to the holier area of the *Azarah*, which led ultimately to the Holy of Holies in the west. Furthermore, the secular half-portion of the *Gazit* adjoined (east, below) the *Etz*. Here the elders of the court judged the priests. Its sanctified half portion was in the *Azarah* (east, below the *Golah* Chamber); there the priests sat. See diagram below:¹⁹



A. Büchler sought to identify the parhedrin chamber with the second "Sanhedrin of twenty-three."²⁰ He located this chamber inside the Nikanor gate in the Court of Israel. However, this does not agree with the talmudic statement that the parhedrin served as quarters for the high priest and that it was in the "secular" section.²¹

4. THE MEZUZAH IN THE PARHEDRIN CHAMBER

J. Z. Lauterbach believed that a Mezuzah was put on the door of the Parhedrin Chamber to secularize the sessions of the Sanhedrin, because of its political nature.²² This is inaccurate; the only reason was that that chamber served as the residence of the high priest. As Rabbi Judah implies, the setting of a Mezuzah there was a "decree," i.e., its purpose was to have the priesthood controlled by Pharisaic law. This "decree" surely did not apply to the

Lishkat ha-Gazit — the seat of the Great Sanhedrin.²³ Hence, by identifying Parhedrin with Lishkat ha-Etzah (boule), we can understand the need for a Mezuzah.^{23a}

5. THE PHARISAIC DOMINATION OF THE PRIESTS

The secularization of the priestly parhedrin, or the subordination of the priestly council to the Sanhedrin,^{23b} is enhanced by other traditions, such as the administering of the "bitter waters" to a suspected adulterous bondswoman by Shemaiah and Abtalion.²⁴ Most probably a committee of priests functioned for the Sanhedrin, since the Bible speaks particularly of priests directing the ordeal-ceremony.²⁵ This is also the view of Philo.²⁶ The fact that the ordeal was performed in the Temple also points to particular priestly participation.²⁷

There may have been many observant priestly Pharisees in the Great Sanhedrin to whom the supervision of this ceremony was assigned. It is in this manner that one can explain Philo's statement that the trial of the *Sotah* was to be by the "Sanhedrin of Jerusalem."²⁸

The mention of the names of Shemaiah and Abtalion in the mishnaic record on *Sotah*, as given in *Eduyot*, not only sets the date of the particular incident but may also emphasize that though they were of the "common people," as recorded in *Yoma*, their Sanhedrin activity dominated the priesthood.²⁹

The fact that Queen Helena donated a tablet for the reading of the *Sotah* text is also historic proof of the ceremony.³⁰ It was later suspended by Rabban Johanan ben Zakkai because cases of adultery became too numerous³¹ and there was no possibility of establishing evidence of immorality even by carrying out the ordeal.

A further example of the functions exercised by the Sanhedrin is the supervision of the red heifer ceremony by Rabban Johanan ben Zakkai.³²

6. THE "ANOINTED PRIEST" IN WAR

The mishnaic statement that a war cannot be undertaken without the sanction of the Great Sanhedrin³³ is another instance

where the Bet Din's functions supplanted those delegated to the priests by the Bible. It is probable that the Mishnah text refers to the chaplaincy services of the Sanhedrin officials, who preached to the soldiers, encouraging them in their campaigns. Deuteronomy 20ff. speaks of this as a priestly function^{33a} and Mishnah Sotah 8.1 records it as the duty of a special priest, one who was anointed for the purpose.^{33b}

Though in the Second Temple there was no "anointed priest,"³⁴ one may have been chosen for this task,³⁵ his position was not hereditary. His particular priestly obligation was to read the biblical text concerned with "going out to war." Compare the text in I Maccabees 3.55 where Judah repeats Deuteronomy 20.5, "according to the law." Nevertheless, the "shoterim" (officers)^{35a} were the active chaplains and the priest only the chief.³⁶

Perhaps the Bet Din shel Kohanim directed this function under the Sanhedrin's supervision.

7. THE ORIGIN OF THE BET DIN SHEL KOHANIM

The Bet Din shel Kohanim is mentioned in the following sources: Pes. 90b; Ket. 1.5, 13a; R.H. 1.7; Oholot 17.5; Ab. Zar. 36b; Tosefta Sanh. 4.7 (421).³⁷

The reading in Josephus, Ant. 13.166: *koinon ton iereon*, "council of priests," may be a further reference to that body.

Greenwald³⁸ believes that the Bet Din shel Kohanim was organized as a reaction to the Hellenistic priests and that it, in turn, influenced the organization of the Bet Din in Jerusalem.³⁹

It is much more feasible to regard the Bet Din shel Kohanim as a result of the Maccabean Revolt. It was instituted at the same time as the Great Sanhedrin in 141 B.C.E., in order to separate the different functions of the state. As we recall, the all-inclusive gerousia served till the establishment of the Commonwealth. At first, there may have been a close relationship between the Great Sanhedrin and the Bet Din shel Kohanim; but later history shows a cleavage. This is evidenced in the activity of Simon ben Shattah, of Shemaiah and Abtalion, and finally of Rabban Johanan ben Zakkai, as already noted above.

EXCURSUS XXIX

PROCEDURE

1. METHOD OF TRIAL

Some scholars¹ believe that local courts had no right to try capital cases; such matters had to be brought to Jerusalem. This is incorrect. Mishnah Sanhedrin already shows that courts of twenty-three were established throughout the entire country for the sole purpose of adjudicating capital cases. A Tosefta also specifies this distinction.² Only special cases were brought before the Great Sanhedrin in Jerusalem, and therefore these were recorded in the Mishnah. Ordinary matters were passed over in silence.³

The Mishnah Sanhedrin, as well as the extra-canonical works, gives elaborate details of the procedure in capital cases. It might be said that this procedure belonged not only to the lower courts but also included the instance when the Great Sanhedrin itself sat as a trial court to judge a case of national importance. Naturally, the lower courts followed the procedure and philosophy of law set by the higher court.

Though the quorum was twenty-three for capital cases, this number was increased in various instances. If twelve of the twenty-three judges voted for acquittal and eleven favored conviction; then the defendant was declared innocent. But if twelve favored conviction and eleven favored acquittal, or if eleven favored acquittal and eleven favored conviction and one judge said, "I do not know," the number of judges was increased. Two were added each time until the maximum number of seventy-one was reached. Then, if thirty-six favored acquittal and thirty-five favored conviction, the accused was declared innocent; if thirty-six favored conviction and thirty-five favored acquittal, the debate

continued until one of the judges favoring conviction retracted and sided with those that favored acquittal.⁴

Two persons might have been charged with the same crime but would not be tried together;⁵ such procedure might result in prejudice to one and interfere with justice.

Jewish law based its decision only upon the testimony of witnesses; hence no case could proceed without witnesses. The duties of the judges were twofold; they were counsel and prosecutor. They argued for and against, and the verdict rested in their hands. They were court, counsel and jury. There were no personal lawyers, no paid attorneys standing up for the accused. Likewise, in their impartiality, the judges had no right to hear one party without the other, or through interpreters.⁶ It was a court complete; on the testimony of witnesses lay the fate of the accused.

2. MODES OF PUNISHMENT

The Talmud enumerates four modes of punishment for the violation of biblical precepts:⁷ stoning, burning, decapitating and strangling. All of these, administered by the lower courts of twenty-three, came under the jurisdiction of the Great Sanhedrin. To this may be applied the term "executed by the Bet Din."⁸ On the other hand, where our sources speak of other modes of punishment such as imprisonment, confiscation of property or banishment, it might be accepted that these were used by a jurisdiction different from that of the Great Sanhedrin. The king or the ruler who had his own *synedrion* or grand jury dealing with "offenses against the state"⁹ meted out such punishment. To this feature one may apply the term "executed by the king."¹⁰

Corporal punishment for the violation of minor precepts also was administered by the court.¹¹

Cases of imprisonment are mentioned in the Pentateuch^{11a} but these deal only with detention until sentence was passed. Other cases reveal only despotism and not justice.^{11b} Imprisonment is mentioned in I Esdras 8.24 as a form of punishment.^{11c} There is only a vague mention in the Talmud¹² of "prison" but it was not a regular form of punitive justice. A habitual offender might have been incarcerated and made to serve time as a further means of

discipline; but imprisonment was not a usual form of punishment. Josephus, however, speaks of the *boule* imprisoning people for robbery.¹⁸

3. CAPITAL PUNISHMENT^{18a}

Many of the sages opposed capital punishment.¹⁴ Perhaps this leniency was practised even during Temple days. As a rule, the Pharisees were lenient and the Sadducees maintained a severer policy.¹⁵ The former might have followed the policy of "choosing an easier death."¹⁶ Later, the rabbis even aimed to curb the punishment, in accordance with the words of Rabbi Akiba and Rabbi Tarfon who declared that a court killing a person even once in seventy years was a murderous court.¹⁷ To blunt the edge of a cruel court, it was also ruled that there be constant delay. The accused might be returned four or five times in the hope that an iota of innocence be discovered or that he might give testimony in his own defense even at the last moment.¹⁸ To underscore the seriousness of the matter, the members of a court were not allowed to partake of food on the day of sentence.¹⁹

Every effort was made to mitigate the pain. A grain of frankincense was put in a cup of wine and the condemned person drank it to deaden his senses. As a rule this was contributed by wealthy women in an expression of sympathy.²⁰

The Talmud records a great many complicated rules in the meting out of capital punishment. But leniency outweighed all rules. Many interpretations of the law were introduced in a hope that they would rule out the death penalty. There was, for example, the "warning to the defendant"²¹ which had to precede the crime. Since such a "warning" was a rare likelihood before the commission of a crime; its introduction into the law was for the sole purpose of doing away with the possibility of inflicting the death decree. By setting specific stipulations which had to be met before one could truly be adjudged guilty, consequent severe punishment would naturally be mitigated. That flogging should not exceed thirty-nine strokes²² is another instance of leniency followed by the Pharisees.²³ This is corroborated by non-rabbinic sources.²⁴

4. CAPITAL AND CIVIL CASES

The Mishnah records differences in procedure:

- | <i>Non-Capital Cases</i> | <i>Capital Cases</i> |
|------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Were decided by three judges. ²⁶ | 1. Were decided by twenty-three judges. |
| 2. Began either with arguments for acquittal or those for conviction. | 2. Arguments for acquittal were first presented. The court did not begin with reasons for conviction. |
| 3. Verdicts either of acquittal or of conviction may be reached by a decision of a majority of one. | 3. Verdict of acquittal may be reached by decision of a majority of one. A verdict of conviction may be obtained only by a decision of a majority of two. |
| 4. A verdict may be reversed later either way. | 4. A verdict may be reversed from conviction to acquittal but not vice-versa. |
| 5. All, even disciples of the sages, sitting in court may argue in favor of acquittal or conviction. | 5. All may argue in favor of acquittal but not in favor of conviction. (Pupils were excluded from presenting arguments for conviction.) |
| 6. He who argued in favor of conviction may afterwards argue in favor of acquittal and vice-versa. | 6. He who argued first in favor of conviction may argue later in favor of acquittal but not vice-versa. |
| 7. The trial may be held during the night time and the verdict may be reached also during the night. | 7. Trial and verdict must be conducted only during daytime. |
| 8. A verdict, whether of acquittal or conviction, may be reached on the same day of trial. | 8. A verdict of acquittal may be reached the same day, but a verdict of conviction could not be pronounced until the next day. |

9. The opinions of the judges in cases of cleanliness and uncleanness were rendered beginning with the oldest or senior member.
9. The opinions of the judges were first received from those that sat at the side, i.e., the youngest. The junior members on the bench first voted so as not to be influenced.²⁶

5. RABBINIC AND NON-RABBINIC SIMILARITIES

The Mishnah and Tosefta, when compared with Mark and Matthew, reveal a multiple of similarities in the details of criminal law:

	<i>Rabbinic</i>	<i>Non-rabbinic</i>
1. rending of garments in apostasy	Sanh. 7.5	Matt. 26.55
2. before death, a potion to deaden the senses was administered	Sanh. 43a	Matt. 27.34
3. death by means of strangulation	Sanh. 7.1	<i>Ant.</i> 15.6.3 (Herod orders Hyrcanus to be strangled.)
4. local courts (consisted of twenty-three members)	Sanh. 1.6; Tos. Hag. 2.9 (235); Sanh. 7.1 (425)	<i>War</i> 2.14.1; Matt. 10.17; Mark 13.9
5. courts were usually lenient and reluctant to pass death sentences	Makk. 1.10	<i>Ant.</i> 13.9.6; <i>War</i> 4.5.4; <i>Acts</i> . 5.34.40
6. thirty - nine stripes were administered	Makk. 3.10	2 Cor. 11.24; <i>Ant.</i> 4.8.23; <i>Ant.</i> 13.10.6

Josephus also records that a prisoner, at the time of his trial, had to appear in a humble attitude and dress of mourning.^{26a}

These similarities serve to prove the authenticity of the Mishnah's record concerning the procedure as followed in the Jewish courts in the period of the Second Commonwealth.²⁷

6. MISHNAH AND GOSPEL DISCREPANCIES

In connection with the problem of trial procedures the remarks of F. C. Grant are interesting: "The story of the death of Christ was retold in such a way as to exonerate the Roman authorities and shifts the blame upon the Jewish Sanhedrin — in spite of the unquestionable fact that Jesus was crucified, not stoned to death, and that the resulting story violated the Jewish rules of legal procedure at a dozen points. The teaching of Jesus was likewise modified in an anti-Jewish direction, even during the oral period before the Gospels were written, though the climax of the process was not reached until the Gospel of John appeared."^{27a}

To explain the numerous familiar discrepancies, scholars as a rule apologized²⁸ for the procedure of those "synedria." They blamed the particular court in each case, maintaining that it was Sadducean; therefore it had broken every precedent of the law.

Other scholars pointed to the fact that in a case of sedition Rome had empowered each local body with the right to make its own preliminary investigation.²⁹ Various papyri attest to this system.³⁰ If this be true, then it could be assumed that a *synedrion* or grand jury in Jerusalem also was privileged to make its preliminary investigation — and submit it to the Roman procurator. The procedure of such trials is described by the Gospels in the cases of Jesus and the Apostles. Hence we may accept that the Gospel record referred to a preliminary judicial investigation by a *synedrion* serving as a grand jury of Rome and this is entirely unrelated to the procedure of the Great Sanhedrin as described in the Mishnah.³¹

The question of the rights of the Jews to exercise capital punishment during the period of the procurators has been much debated. H. L. Lietzmann³² maintains, ". . . zu zeit des Pontius Pilatus das Synedrion das volle Recht hatte, jurische Religionsverbrecher und Gotteslästerer mit den tode zu bestrafen." The trial of Jesus was before Pilate and he was condemned as a revolutionary and accordingly crucified. It is unhistorical that Jesus was tried by the High Priest for blasphemy.³³

EXCURSUS XXX

THE ABOLITION OF CAPITAL PUNISHMENT

1. TIME AND PROCEDURE

Rabbi Eliezer ben Zadok's eye-witness testimony pertaining to the exercise of capital punishment on the adulterous daughter of a priest is recorded in Yerushalmi Sanhedrin 24b immediately after the text of the "abolition of capital punishment forty years before the destruction." The two adjacent records in the same source seem to be contradictory, since Rabbi Eliezer ben Zadok, who lived close to the destruction of the Temple, testifies to an event of that period. The discrepancy, however, is removed when it is remembered that the entire context and discussion in the Yerushalmi deals with the procedure of "burning one at the stake." R. Eliezer's testimony is only brought as evidence that it was practiced in the fullest sense at that time. The other sages disagreed with him only about the manner or procedure of burning. But the problem of the *time* of the abolition of capital punishment does not enter into the discussion and it is not controverted by the sages. Because of the apparent contradiction, then, we must regard the passage concerning the *time* of the "abolition of capital punishment — forty years before," if taken literally, as an interpolation into the general text dealing with the question of *procedure*.

Yet the mere reading of "four" instead of "forty" removes any inconsistency between Rabbi Eliezer's eye-witness testimony and the tradition pertaining to the time element. Instead, the two records coincide.¹

2. THE SOURCES IN THE MEKILTA OF R. ISHMAEL AND OF R. SIMON BEN YOHAI

One must compare in this study of the abolition of capital punishment the texts of the Mekilta of R. Ishmael and that of

מעם מזבחו תקחן למות נמצאו למדין שטנחרין בצד מזבח.

מןין שתהא סנהדרין סמוכה למזבח תיל מעם מזבחו תקחן למות.

ומניין שאין מミיתין שלא בפני הבית תיל מעם מזבחו תקחן למות. לא אם יש מזבח אתה ממית ואם לאו אין אתה ממית.

This second text adds to the records noted in the Mekilta of Rabbi Ishmael: whereas, the Mekilta of R. Ishmael speaks only of the *place*, the Mekilta of R. Simon b. Yohai³ speaks also of the *time*, relating it to the existence of the Temple altar.

麥坎 אמרו Nevertheless, the Mekilta of R. Simon continues: ארבעים שנה קדם חורבן בית שני בטלו דיני נפשות מישראל מפני שגלו סנהדרין ולא היה מקום במקדש.

הא אם יש מזבח This sets the time as "forty years before" which is diametrically opposed to the earlier text of the same Mekilta: אתה ממית.

It is known that the Temple altar remained until three weeks before the destruction.⁴ Hence to conciliate the discrepancies we must regard the text of the Mekilta of R. Simon pertaining to "the forty years" as a late addition, or to be read "four" — showing that capital punishment really did continue till about 66 C.E.⁵

3. THE RECORDS OF THE "EXILES OF THE SANHEDRIN"

S. Zeitlin believes that the Babylonian tradition of the "exile of the Sanhedrin to the *Hanut* (forty) [four] years before the Destruction" refers to the political Sanhedrin which was dissolved when Rome captured Judaea.⁶ But, one may ask, does the Talmud refer to a political Sanhedrin? From the list of the various "exiles" of the Sanhedrin in Rosh Hashanah 31a^{6a} one realizes that the Talmudic concern was only with the religious Sanhedrin.

The passage declaring that "the demolition of the *Hanuyot* occurred three years before the destruction of the Temple because of insistence on rendering decisions according to the letter of the law"⁷ is further corroboration of the parallel tradition of the exile of the Sanhedrin, *four* years before 70 C.E. This text may refer to the events of 66 C.E. which prompted the Eighteen Decrees,⁸

regulated by those in the attic of Rabbi Hananiah ben Hezekiah. The *Hanuyot*, as noted in the talmudic list of the Sanhedrin's "exiles," may have been the final meeting place of the Great Sanhedrin in Jerusalem, before the emergence of a new religious center in Jabneh.

THE GREAT SANHEDRIN

Part III

NOTES

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- VT₂* — *היהודים במצרים בתקופה ההלניסטית-הרכומית לאורו התאטיפרולגית*, Jerusalem, 1945.
- VT₃* — *אתניאורה וירושלים Vol.) XX*, *Tarbiz*, (J. N. Epstein Jubilee Vol.), Jerusalem, 1950, p. 66.
- VT₄* — *המצע האזורי של אגדות אריסטאטיים*, *Sefer Dinaburg*, Jerusalem, 1950.
- Waxman* M. Waxman, "Civil and Criminal Procedure of Jewish Courts," *Students Annual of Jewish Theological Seminary*, N. Y., 1914, p. 259-309.
- Weinberg* M. Weinberg, *חבר העיר Wohlgemuth's Jeschurun*, XVI, (1929) No. 5-6, p. 240 ff.
- Wellhausen* J. Wellhausen, *Die Pharisaer und die Sadducäer*, 2nd ed., Hannover, 1924.
- W-P* H. A. Wolfson, *Philo*, Cambridge, Mass., 1947.
- Tad* *תפקיד החזקה* *T*, by Maimonides.
- Yawitz* Z. Yawitz, *חולות ישראל*, 3rd ed., Jerusalem, Tel Aviv, 1929.
- Z* Ed. Zuckerman, *Tosefta*, 1881.
- ZRIJ* *Zeitschrift für die Religiösen Interessen des Judenthums*, ed. by Z. Frankel (1844).
- Zucker* Hans Zucker, *Studien zur jüdischen Selbstverwaltung im Altertum*, Berlin, 1936.
- Zunz* L. Zunz, *Die Gottesdienstlichen Vortage der Juden Frankfurt A.M., 1892*; Heb. Ed. *הדרשות בישראל*, Jerusalem, 1949.

Notes to Chapters

pp. xiii-xviii

(See Selected Bibliography, p. 117, above, for explanation of references to abbreviations and names of authors.)

INTRODUCTION

1. For general bibliography, see E. Schürer, *Geschichte des jüdischen Volkes im Zeitalter Jesu Christi*. (GJV) 4th ed. (Leipzig, 1901-1911), II, p. 237; (Eng. trans., [HJP, Edinburgh, 1890] II, I, p. 163); W. Bacher, "Sanhedrin," *Hastings Dictionary of the Bible*, 1902 IV, p. 402; C. H. Thomson, *A Dictionary of Christ and the Gospels* II, p. 567; K. Kohler, "Sanhedrin," *Dictionary of the Apostolic Church*, p. 454; S. Gandz, *Monumenta Talmudica* (Wien u. Leipzig, 1913), II, p. 18; J. Juster, *Les Juifs dans l'empire Romain*, (Paris, 1914), I, p. 400; F. J. Jackson and K. Lake, *The Beginnings of Christianity* (London, 1920), I, p. 33-34; J. F. Moore, *Judaism in the First Centuries of the Christian Era* (Cambridge, 1927), III, p. 32; S. Eisenstadt, *Ain Mishpat, Repertorium bibliographicum litteraturae totius iurisprudentiae hebraicae*, (Jerusalem, 1935). Additional lists may be found in R. Marcus, "Selected Bibliography (1920-1945) of the Jews in the Hellenistic-Roman Period," *Proceedings of the American Academy for Jewish Research*, XVI (1946-47), pp. 97-181; R. H. Pfeiffer, *History of New Testament Times* (N. Y., 1949), pp. 531 ff. and L. Finkelstein, *Ha-Perushim ve-Anshe Keneset Ha-Gedolah*, (New York, 1950), p. 18-19.

2. Sanh. 1.6.

3. Hag. 2.2; Abot I; Tos. Hag. 2.8 (p. 235).

4. See *Exc.* 1. Cf. the "moot question" as posed by S. W. Baron, *A Social and Religious History of the Jews*, 2nd ed. 1952, Vol. I, p. 222 and note 6 on p. 396. (In these NOTES *Excursus*s will be abbreviated *Exc.*)

5. *JQR*, XXXIII (Apr. 1943), p. 493.

6. *JTS*, XXXI (Oct. 1919).

7. Moore I, p. 132. Cf. also *idem*. I, p. 85 ff., 261; III, p. 32.

8. See below, Chapter XI for corroboration of such practices by the rabbis.

9. I. Abrahams, *Studies in Pharisaism and the Gospels* (Cambridge, 1924), II, p. 129.

10. M. S. Enslin, *Christian Beginnings* (N. Y., 1938), p. 400; W. F. Albright, *From Stone Age to Christianity* (Baltimore, 1940), p. 202 ff.

11. SZ₁, p. 107.

12. See H. St. J. Thackeray in the Introductions to *Josephus*, Vols. I, II, IV, Loeb Classical Library; P. Churgin, *Mehkarim b'tekufat bayit sheni* (N. Y., 1950), pp. 274 ff, 313, 329 ff.

13. *Ant.* XX, 267. See also, J-LCL, I, p. XII.

CHAPTER I: THE NAME — SYNEDRION

1. For the general usage of "synedrion" in Greek Sources see LS-GL, II p. 1704; *PWRE*, VII, p. 1338; McDonald, pp. 2, 4, 121, 123 and especially App. II: "The Synedrion at Athens," p. 295 ff; The Jewish Sanhedrin: *PWRE*, p. 1346; Cf. also K-GL, II, p. 401. Comp. especially SZ₁, second edition, Appendix "The Synedrion and the Sanhedrin" p. 228 ff.

2. 8.56, 75, 79 (All classical literature sources are taken from LCL editions).

3. *Hellenica* I, 31; *Memorabilia* 4, 2.

4. *Oration to Nicolas*, III, 16.

5. *Ajax*, 749.

6. IV, 22.

7. 1.31; 2.26; 3. 12, 68; 6.16, 18, 33.

8. *Geography* 14, 3.

9. See, however, discussion by SZ₁₁, p. 311 and SZ₁₇, p. 109.

10. See *Exc. II*.

11. Demosthenes, XXIII, 65; cf. Whibley, *A Companion to Greek Studies*, 4th Ed., p. 454, 479; Frankel₂, p. 68; Smith, *Dict. of Greek and Roman Antiquities*, p. 1084; Gilbert, *Constitutional Antiquities of Sparta and Athens*, pp. 123, 380; Grote, *History of Greece* VI, p. 1; Vinogradoff, *Outlines of Historical Jurisprudence* (The Jurisprudence of the Greek City), II, p. 181; McDonald, p. 128, 297.

12. Aristotle, *The Athenian Constitution* III, p. 6.

13. See *Exc. II*.

14. Cf. F. Preisigke, *Fachwörter des öffentlichen Verwaltungsdienstes Ägyptens in den griechischen Papyruskunden der Ptolemaischer Zeit* (1915) 162. See also *Exc. III*.

15. Tebtunis Papyri, 43.30. Cf. Semeka, *Ptolemaischen Recht*, p. 184.

16. Amherst Papyri 33.8. Cf. R. Taubenschlag, "Le Proces de l' Apotre Paul en lumiere des Papyri," *Bulletin International de l'Academie Polonaise*, (Cracow 1922-4), p. 55. See also F. Preisigke, *Wörterbuch der griechischen Papyrus — Urkunden*, II, 331, and *idem.*, *Fachwörter*, 531.

17. Tebtunis Papyri, 72, 155-171.

18. SZ₁₀, p. 193 rejects this. Cf. however, R. Taubenschlag, *The Law of Greek and Roman Egypt in Light of the Papyri*, p. 367; "The Court of the Chrematistae, founded by Ptolemy II was a collegiate court. It was a circuit court coming to those who applied for judicial aid." Comp. also Oxyrhynchus Papyri '846; Theopompos, *Hellenica* 12, 29 (The Constitution of Boeotia); Cf. also VT₂, p. 145 and Botsford and Robinson, *Hellenic History* p. 410. For chrematistae as "experts in a matter" see Aristaeas, p. 145.

19. See *Exc. IV*.

20. Cf. C. H. Toy, I.C.C., *Proverbs*, p. XXXII; B-HDB, p. 297.

20a. Cf. G. Gerleman, "The Septuagint Proverbs as a Hellenistic Document," *Oud-S*, Vol. VIII, p. 27: "The friendly attitude to Hellenistic culture which has stamped Septuagint Proverbs has left its most distinct work in the style of the translation." See also Baumgartner, p. 253, who notes that the translator used classical authors as well as Midrash for his style.

20b. M. Hadas, *Aristeas to Philocrates*, (N. Y., 1951), p. 54; Comp. VT₄, p. 83. Perhaps it may be dated about 170 B.C.E. or even 200 B.C.E. See H. M. Orlinsky's review in *Crozer Quarterly*, XXIX, No. 2 (April 1952) pp. 200-1.

20c. Aristeas, 301 (p. 18). See below note 33.

21. 11.9: "Do not deliberate in judgment with sinners." 23.14: "Remember your father and mother when thou deliberates among men."

32.12: *en meso gunaikon men synedreue* is not to be translated "sit not in the midst of women," as rendered by SZ₁₁, 309, but only as "among wives let her not take counsel." Ben Sira addresses himself to the father to guide his daughter, as in 7:24, 25 or in chap. 9 and 26. Cf. also CAP I, p. 471. The Hebrew rendition extant, which probably was prepared in the early Middle Ages, is וְבֵית (בֵּין) נָשֶׁם אֲלֹתָה This is based on the word לְאַל which LXX often translates as "synedrion." See e.g., Prov. 3, 32; 15, 22. Comp. SBH₁, p. 185, note 30 and p. 196.

On the original Hebrew text of Ben Sira see C. C. Torrey, "The Hebrew of the Genizah Sirach," *AMJV*, p. 585.

22. CAP, I, p. 268; SZ₂, p. 25.

23. 14.5: Alcimus was called into the *synedrion* of Demetrius.

24. 17.7: "The tyrant himself and his whole *synedrion* admired the endurance of the mother and her seven sons." This book is dated about the beginning of the Common Era.

25. 6.1, 17; 11.9.

26. 4.1. Many scholars believe that this book was originally composed in Hebrew, not later than about the year 63 B.C.E., since Pompey's activities are widely discussed therein. The fourth chapter is said to have been written much earlier. Cf. CAP, II, p. 630; Moore, III, p. 53.

27. See discussion by SZ and H. A. Wolfson: SZ₁₇, p. 112; Wolfson, "Synedrion in Greek Jewish Literature and Philo," *JQR*, (Jan. 1946) XXXVI, pp. 304-311; *idem.*, "Notes on Proverbs 22.10 and Psalms of Solomon 17. 48," *ibid.*, (July, 1946) XXXVIII, p. 87.

28. An examination of the Psalms of Solomon reveals that when the author speaks of "assemblies" he uses the terms *ekklesia* (X, 7) and *synagoge* (X, 8; XVIII, 18, 48, 50). When the text refers to judgment, *ad loc.* IV, 1, *synedrion* is specifically used, Cf. CAP, II, p. 636 note; GJV, II, p. 242 n. 12; Büchler, p. 231. See also SBH₁, p. 185 note 31. Cf. M. Aberbach, "The Psalms of Solomon," *JQR* (Apr., 1951), XLI, p. 382,

who discusses the question whether verse IV, 1, "the council of the pious," refers to a Pharisaic synedrion. He points out (note 14) that "the question 'Wherefore sittest thou . . . in the council of the pious?' implies habitual attendance, not occasional visits."

29. On the Hellenization of the Jews between 334 B.C.E. and 70 C.E., see H. Gilbert in *American Journal of Theology*, (Oct., 1909), XIII; VT₁, and Pfeiffer, p. 8 ff.

30. 44, 349-350.

31. 11, 39.

32. See list in the Index Volume (VII) of Philo, and also the instances of synedrion in the following texts: a) Council: *De Confusione Linguarum*, 18, 86; *De Somniis I*, 34, 193; *Legatio ad Gaium* 31, 213; b) The synedrion of Moses: *De Sobrietate* 4, 19; c) Court: *Quod Omnis Probus Liber Sit*. 2, "their unstable synedrion is always open to bribes from those who are brought to trial (*krinomenon*)" d) Synedros (counsellor): *Legatio ad Gaium*, 31; 33, 244; 34, 254; 44, 350; e) other instances: *De Vita Mosis VI*, 39; *De Decalogo*, 20; *De Praemiis et Poenis* 5, 28: "synedrion kai dikastérion"; 5: "For each has a private synedrion and a dikastérion of its own." *De Vita Contemplativa* 3, 27: *synedrion kai bouleuterion*; *De Ebrietate* 40. Most of these cases are metaphorical. Cf. W-P, II, p. 348.

33. *Ant.* 12.2.13 (103): "Demetrius . . . called a meeting (*synedrion epoiesato*) in a house." Cf. *Aristeas* 301 (p. 218 ff): "he held a session (*synedrion poiesamenos*) in a house." Cf. *Meg.* 9a: הַכּוֹתֵן בָּעֵבֶר בְּחִים. See in Swete, *The Letter of Aristeas*, edited by Thackeray, p. 603.

34. *Ant.*, 14.5.4 (91): *synedrio*. Comp. *War* 1.8.5 (110): *synodos*.

34a. In 63 B.C.E. Pompey removed the title of king from Hyrcanus. In 57 B.C.E. Gabinius went a step further by dividing the country into five parts, arranged, no doubt, as customs or taxation districts. The council at the head of each district regulated all civil matters; it was the *conventi juridicti* of the Romans. The Latin version in *War* is: *in conventus quinque divisit*; in *Ant.*: *quinque juridius conventibus*. Cf. B-HDB, p. 397. Büchler, p. 210 n. 185, however, says, "Die Zentralverwaltung bestand sonach auch weiterhin in Jerusalem, nur war an stelle Hyrkans die Aristokratie getreten." See Churgin₂, p. 185, n. 11. See *Exc. X*.

35. See above notes 23, 24, 25.

36. *Ant.* 16.11.1 (357, 360, 361). The Latin translation has "in concilium." See *Exc. V*. See also *War* I, 537.

37. *Ant.* 17.3.1; Comp. *War* I, 1.29.2 (571): "he assembled a *synedrion* of his friends and relatives." Cf. Lehmann, *REJ.*, XXXVII p. 14, who points out the illegality of this trial. See *War*, J-LCL, I, p. 217, 263, referring to Reinach's note, that *syngeneis* and *philoī* are technical terms in the hierarchy of a Hellenistic court.

38. *Ant.* 17.5.2 (90). In 91 we read: "Varus would be judge (*dikaste*)."

In *War* 1.31.5 (618): "I offer you a *dikastērion*." In 620: "The king assembled a *synedrion* of his relatives and friends."

39. *Dikastērion*: *War* I, 618 — Antipater's trial; *ibid.* I, 538, 540 — the other son's trial.

40. *Synedrion*: *War* I, 620, 640 — Antipater's trial; *ibid.* I, 537 — the other son's trial; *ibid.* I, 571 — Pherora's trial.

41. *Ant.* 16.11.1 (537) — the son's trial; *ibid.* 17.5.2 (90) — Antipater's trial.

42. Cf. Zucker, p. 91.

43. *Ant.* 15.6.2 (173).

44. *War* I, 433.

45. See *Exc.* V.

46. *Ant.* 14.9.3; Cf. Büchler, pp. 230-231; U. Holzmeister, *Biblica*, Vol. 19 (1938), p. 153.

46a. See below Chap. X: Functions. Sec.: "Special Trials."

46b. *Ant.* 20.9.1 (200).

47. See SZ₁, p. 72.

47a. *War* II, 2, 4 (25); II 2, 6 (38); II, 6.1 (81, 93).

47b. *Ibid.*, VI, 243.

48. *Ant.* 20.9.6(216, 217): *patron nomon*.

48a. *Life* 12 (621).

48b. *Ibid.*, 46 (236); 66 (368).

49. *Ant.* 15.7.4: Herod's most friendly relatives participated. In *War* I, 444 there is no record of a trial; we only see that "Herod ordered that both Joseph and Miriam should instantly be put to death."

50. *War* 4.5.4, (335, 338): *dikastēria kai kriseis*. The tribunals of the Zealots gave a semblance of justice and were only mock courts. They were not part of the Great Sanhedrin system which had already dissolved during the Revolt.

51. Josephus' use of *synedrion kathizein* (*Life* 236, 368; *Ant.* XX, 200) may be a Thucydidean copy. See Introd., J-LCL, IV and below *Exc.* X, and also *Exc.* IV, end.

51a. SZ₁₇, p. 28.

51b. See *Exc.* V.

51c. J-LCL, II, Introd. p. xv.

51d. *Ibid.*, p. xvii-xviii.

52. Josephus' description of the seat of judgment in Solomon's palace (*Ant.* 8.5.2 [133]) is only an unscriptural portrayal: "There was a great and beautiful hall supported by many pillars which he (Solomon) had built to admit a great number of people to judgment (*kriseis*) and decisions of state cases and to provide room for gatherings (*synodon*) of men who opposed each other in trials."

53. *Mark*. 13.9; 14.55; 15.1; *Matt.* 5.22; 10.17; 26.59; *Luke* 22.66.

see Moulton & Milligan, *Vocabulary of the Greek Testament III*, p. 604 and SBH₁ pp. 186 and 195.

54. *Documents of the Primitive Church*, p. 91.

55. SZ₁₀ vs. SBH₁, 194. Targum Jonathan on Gen. 49,6 has only בָּעֵצֶת הַוְן.

55a. John 71.47. See M. Goguel, *Jesus* (Paris, 1950), p. 427, No. 2.

56. IH₁. See *Exc. X*.

57. Cf. LG in a note in Moore, I, p. 85: "The name Sanhedrin was not assumed by the Bet Din at Jamnia nor by the Bet Din, or academy of the Patriarchs."

58. See *Exc. VI*. Cf. Allon₄, p. 116.

59. The text of (1) Shebu. 2.2. equates (2) Sanh. 1.5:

אין מוסיפין על העיר ועל העזרות אלא במלך ונביא ואורים ותומים ובסנהדרין (1) של ע"א.

(2) Comp., however, below Chap. X, note 91.

60. a) Sanh. 1.6; Yer. Sanh. 19c: סנהדרין גודלה היהה של שבטים واحد.

b) Mak. 1.10: ר"ע ור"ט אומרים אילו היינו בסנהדרין.

See SBH₂, p. 172, n. 25a. Rabbi Akiba also uses the term Bet Din ha-Gadol: (Tos. Mak. 3.7 [441]). הר'ו ב"ז הגוזל שהרג... הר' זה אינו גוללה.

c) Midd. 5.4: לשכת הגזית שם היהה סנהדרין גודלה של ירושלים. This refers definitely to the days before 70 C.E. We do not find, after 70 C.E., any historic trace of the existence of a "small" Sanhedrin. Cf. Newman, p. 132. Cf. Allon₄, p. 109 n. 90.

60a. Hebraizations of *dikastērion* or *kritērion* do not exist, unlike the case of *synedrion*.

60b. Barong, Vol. II, p. 120.

ברם ביבנה or עליה ביבנה (Sot. 48b) or (Eduy. 2.4; Yer. Ber. 7d; Tos. Eduy. 1.1; Shab. 138b) are used. The Amoraim, however, used "Sanhedrin" indirectly: a) R. H. 31a:

אמר רבי יוחנן עשר מסעות נסעה שכינה... וכגמץ גלחה סנהדרין מלשכת המזית לחנות... מחנות לירושלים ומירשלים ליבנה ומיבנה לאושא.

אמר רב יהודה אמר רב כל עיר שאין בה שנים לדבר ואוזע לשפטו (b) Sanh. 17b: אין מושבין בה סנהדרין ובביתו היו שלשה וביבנה ארבעה.

בפולמוס של טיטוס (קוטיס) גورو על עטרות כלות ושלא למד אדם את בנו יונתן 62. Sot. 9.14:

63. Specific references to the period before 70 C.E. may be seen in: a) Mek. on Ex. 21.14; ב"ז מזבח. See below, Chap. XII, note 22a; b) Ab. Zar. 8b: ארבעים שנה עד שלא חרב הבית גלחה סנהדרין c) Suk. 51b: ר' יהודה אומר ע"א קמדראות כנגד ע"א של סנהדרין מורה.

Rabbi Judah who mentions "Sanhedrin" (Sanh. 1.6) often records many historical traditions as in Tos. Eduy. 2, 4 (457): אמרחוון של כהנים מטפיקין להן מהזיה. He is a reliable bearer of ancient traditions. See below, Chap. VIII, note 5.

63a. *Iudeorum primates, qui in utriusque Palaestinae Synedriis nominantur.*

63b. *Leges Novellaes ad Theodosianum*, XVI ed. Mommsen, 1905, Lib. XV, p. 895.

64. "Gerousia" is generally applied to an aristocratic institution as existed in Sparta. See PWRE, III, p. 1034; LS-GL, p. 306; Sophocles, *Lexicon*, p. 329.

65. K-DAC, p. 454; PWRE VII, p. 1349; E. Meyer, *Geschichte des Alterthums*, II, p. 82, 343; B-HDB, p. 398; Lauterbach₂, p. 42; LF₁, p. 84; LF₂, p. 31, 42. E. Bevan, *Jerusalem Under the High Priests* (London, 1904), p. 6. Laut₄ pp. 29, 30, 105. See also *Exc.* VII. Cf. Allon, p. 116.

CHAPTER II: THE NATURE OF THE GREAT SANHEDRIN

1. See *Exc.* XII.

2. Cf. *Ant.* 12.3.3 (138).

2a. See also Judith 4.8; 11, 14.

3. Comp. SZ₁, p. 69; SZ₈, p. 13; T-Z, p. 5 ff; L. Baeck, *The Pharisees*, p. 21.

4. See *Exc.* VII. See also R. Marcus, J-LCL, VIII, App. D. Cf. VT₈, p. 66.

5. *Ant.* 13.6.7 (213).

6. I. Macc. 14.28: "In the great assembly (*synagoge megale*) of priests and people." I Macc. 14.46: "All the people agreed to make it a law that they should do all these things for Simon."

7. I Macc. 14.35.

8. See F. W. Madden, *History of Jewish Coinage*, p. 38; Geiger, p. 121; Wellhausen, p. 29, 34. These scholars regard *Heber* as synonymous with Sanhedrin. See, however, LG₁ III, pp. 421, 425. Weinberg, "*Heber ha-ir*" *Jeschurun* XVI (1929) No. 5-6, pp. 240-7; XVII (1930), pp. 269-274. See *Exc.* IX. See note in J-LCL, VII, p. 307. Perhaps *Ant.* 13.166: *koinon ton ioudaion* (*populus iudeorum*) refers to Heber ha-Yehudim. See, however, T-Z, p. 203.

8a. See full discussion below, Chap. IV. Sec.: "Political and Social Background."

9. Eduy. 5.4; Pes. 17b; Hag. 18b; Ab. Zar. 37b; Shab. 14b. Cf. LG₂, p. 5; SZ₇, p. 506; I. H. Weiss, I. p. 105.

10. *Ant.* 11.4.8: (111); 14.3.2 (41); 20.10.

11. See Büchler, note 180 and also p. 222 for examples of Hasmonean and Herodian autocracy. Cf. the list in Juster, II, pp. 128-130.

12. See Yer. Ket. 32c; Mak. 5b. Cf. LG, "Alexandra Salome." JE, 1, p. 360.

13. See *Exc.* XII.

14. Yeb. 71b; Pes. 70a; Yoma. 35b. For the identification of Sameas

and Pollio see SZ₁₂, p. 64; Graetz, III, note 17. These teachers are the first in whose names haggadic statements are recorded. See Mek. Chap. IV, Beshallah, Ex. 14.15 (ed. Laut. I, p. 220).

15. *Ant.* 20.10.

16. See A. Momigliano, *CAH*, X, Chap. XI, p. 326.

17. Pes. 66a; Hag. 16b; Tos. Sanh. 7.11 (p. 427); Tos. Sheb. 3.9 (p. 64); Git. 4.3; Ar. 9.4; B.M. 104a. Cf. SZ₇, p. 513.

18. *War* 1.33.6; Juster, II, p. 130, note 1; Wellhausen, pp. 105-109; SZ₁, p. 48.

19. *Ant.* 20.10.

20. Men. 13.21 (p. 533): אוי לי מבית בתיות ו מבית ישמעאל בן פאבי שדים כהנים גודלים ובניהם גברין וחטניון אמרכלין ועבדיהן באין וחויבטן עליון במקלות.

21. *Ant.* 20.8.8.

22. Shab. 15b; Git. 4.1-3; Pes. 88b; See also Acts 12.1-9.

23. Par. 3.7 and Men. 10.3 give evidence of Pharisaic domination over the Sadducees. See also Ant. 18.1.4.

24. Cf. J. Morgenstern, "Book of the Covenant," *HUCA*, VIII, p. 88.

24a. M. A. Beck, "Relations entre Jerusalem et la Diaspora Egyptienne au 2e siècle avant J.C.," *Oud-S*, II (1943), p. 120.

24b. *Life*, 62. See SZ₉, p. 6.

24c. See *Exc.* XXVIII.

25. See *Exc.* XIII. The proof of the political authority enjoyed by the Sanhedrin, as suggested by Allon₄, p. 127, applies only to the pre-Hasmonean period, to the gerousia—and not to the Great Sanhedrin.

CHAPTER III: ORIGINS AND OPINIONS

1. Comp. SZ₁, second edition, Appendix "The Synedrion and Sanhedrin," pp. 232 ff.

1a. Hoffmann₁, p. 26; Hoffmann₂, p. 21. His first opinion that the Sanhedrin existed till the fall of the Jewish state is correct. Comp. below Chap. XII and SBH₂, p. 169.

2. Cf. Jost, *Geschichte des Judentums*, p. 224, n. 1.

3. See Hoffmann₂, p. 19 for a general survey of justice as executed prior to 586 B.C.E.; also Büchler, p. 72, note 67.

ושפטו את העם בכל צע והיה כל הוגבר הנדרול יבאו אליך וכל הוגבר הקטן ישפטו דם.

3b. Num. 35, 24 is used in Sanh. 1.6 as the biblical source for the Great Sanhedrin whereas Num. 11, 16 refers to the small Sanhedrins. See Sifre, *ad loc.*

4. Cf. M. Noth, "Das Amt des Richters Israels," *Festschrift fur Alfred Bertholet*, (Tübingen, 1950), p. 415.

5. II Chron. 19.11. Cf. P. Dikshtein, "Mishpat u-medina b'yisrael," *Hatsekufah*, XXIX, p. 252; W. F. Albright, "The Judicial Reform of Jehoshaphat," *AMJV*, p. 61.

5a. As held by J. J. Rabinowitz, "L'sheelat ha-nesiut v'ha-sanhedrin" (a note of criticism of LF₈), *Hadoar*, Vol. 27, No. 15 (Feb. 7, 1947).

5b. I Kings 4.3 ff.

5c. See *Exc. VI. Comp. IH*.

6. Cf. Frankel₂, p. 69; Wellhausen, *Prolegomena*, p. 199; Graetz, II, p. 34, n. 2; Zunz, p. 32; Michaelis, *Mosaisches Recht*, p. 214; Blum, pp. 20.28. Comp. views of K-DAC, p. 454 and B-HDB, p. 398. See also W. F. Albright₁, p. 208 on the date of the Chronicler.

7. Comp. CAP I, p. 111 on 1 Macc. 12.6: "The earliest reference to it [the gerousia] is, however, 2 Chron. XIX, 8." Though "Zekenim" or "gerousia" are not mentioned here, the implication is apparent.

Josephus (*Ant.* 9.3.7) adds a Scriptual detail pertaining to the importance of Jerusalem in Jehoshaphat's time: "He returned to Jerusalem at which place he also appointed judges from among the priests and Levites and those holding the chief places among the people and exhorted them to decide all cases with care and justice. And if any of their fellow citizens having differences about matters of great importance they were to take very great pains to render a just decision concerning these matters for it was proper that in the city, in which was the Temple of God and where the king had his residence, judgment should be given with special care and utmost justice." We must regard this elucidation as an anachronism. It may be construed only as evidence of a superior court in Josephus' own day but does not prove the existence of a Great Sanhedrin in the biblical period.

8. Graetz, II, p. 189.

9. Ezra 7.25: מני שפטין דין. See H. H. Schaeder, *Ezra der Schreiber*, Tübingen, 1930.

10. Ez. 44.23-24.

11. *Midrash and Mishna*, p. 40; Laut.4, p. 29; Comp. also Bokser, p. 29 ff. See also Barons, Vol. 1 p. 397 n. 20.

12. Comp. Lieberman₂, pp. 29, 37. See *Exc. XVI*.

13. Cf. also I Macc. 7, 12; see also T-Z, p. 138, note; and Lieberman₂, p. 47.

14. M.K. 5, 8: שהכנים מודיעים את העוריה שלא ברצון חכמים.

15. SZ₆, p. 15; LF₁, p. 68; See *Exc. XIV*.

16. Yoma 69b. *Ant.* XI, 317 ff; See scholion, *Meg. Ta'an.*, Chap. IX (Kislev); Cf. J-LCL, VI, App. C, p. 512.

16a. מיקרי ישראל.

16b. *kai tou politikou plethous.*

16c. ויקרי ירושלים עמו ואלף בלוטין.

17. Frankel₁, p. 9.

17a. LF₄, p. XLVII denies this, remarking, "We cannot be certain regarding the origin of the legend quoted by Josephus according to which

Jaddua was a contemporary of Alexander the Great. Presumably the source of confusion in Josephus' record was the identification of Darius II, the contemporary of Jaddua, with Darius III whom Alexander the Great overthrew." LF regards the talmudic narrative "as an obvious emendation born out of the particular affection in which Simeon was held in rabbinic circles."

18. Cf. SZ₄. See Klein p. 37.

19. *Idem*. See *Exc. XIV*.

20. Neh. 8.10; Moore I, p. 31.

20a. See *Exc. XIV*. One cannot accept Bokser's view (p. 34) that "The Great Assembly, as a corporate body, perished with the decline of the sopheric movement, but it was reincarnated during Pharisaic times, in the Sanhedrin, a Greek term meaning a court, council or senate."

21. *Le Synhedrin*, p. 36.

21a. "Synedrion" in the *Letter of Aristeas* (see above Chap. I, note 33) only indicates the knowledge of the term then, but is no proof of the existence of an institution.

22. See above note 11; Laut.₄, p. 200-2.

23. Herford₁, p. 64; Herford₂, p. 64.

24. Ant. 12.3.3 (138), R. Marcus, J-LCL, VII, App. D, p. 757; T-Z, p. 8, note 24.

25. LF₂, pp. 35, 293; LF₃, p. 68. Ed Meyer, *Ursprung und Anfänge des Christentums* II, p. 126, already presents this view. To regard Simon II the high priest as a convert to the plebeian cause or Ben Sira and Antigonus of Soko as his contemporaries, i.e., patricians converted to plebeianism, is difficult. Their aristocratic leanings continued, as evidenced in: (1) Simon II's place in the aristocratic gerousia and (2) Ben Sira's dignified description of aristocracy. Furthermore, Antigonus of Soko was not a contemporary of Ben Sira and of Simon II. He belonged to a later period — to the time of Simon the Hasmonean. See below, Chap. IV. Sec.: "Antigonus of Soko" and *ibid.* note 75. See also *Exc. VII*.

25a. See below, Chap. IV. Sec.: "Results of the Hasmonean Revolt."

26. By Lauterbach and Herford cited above. Cf., however, JL-BC, I. See also Barong, Vol. II, p. 348 n. 60. See also LG, *Eine Unbekannte Jüdisch Sekte* (N. Y., 1922); Pfeiffer, p. 57; Cf. W. H. Brownlee, "A Comparison of the Covenanters of the Dead Sea Scrolls with Pre-Christian Jewish Sects," *The Biblical Archaeologist*, XIII, No. 3 (Sept., 1950), p. 56. M. H. Segal, "Habakkuk Commentary and Damascus Fragments," *JBL*, LXX, June, 1951, p. 146, applies it to the reign of John Hyrcanus.

27. תְּנַבֵּשׁ מִשְׁרָשֶׁן. Cf. CAP, II, p. 800; See SZ₂₄, *Zadokite Fragments*, Facsimile, II. 7.

28. 60.21 נֶצֶר מִצְעָן.

29. A. Büchler, *JQR*, VIII (1913), p. 429-485; A. Marmorstein, *Theologisch Tijdschrift* (1918). See H. H. Rowley, *The Relevance of Apocalyptic*, London, 1946, p. 74.

30. Cf. SZ, *JQR* (1926) XVI, p. 385, in a review of Herford's *Pharisees*, pp. 23-24; *idem.*, *JQR* (Jan., 1949), XXXIX, p. 238; *idem.*, *JQR* (July, 1950) XLI, p. 36, "The Hebrew Scrolls, Once More and Finally," and especially *idem.*, *The Zadokite Fragments*, Monograph Series, No. 1, *JQR*, 1952, p. 5. See also P. Kahle, "The Karaites and the Manuscripts from the Cave," *Vetus Testamentum*, Leiden, Jan. 1953, p. 84.

The author of the Fragments, probably a Karaite, knew of the talmudic tradition that there were 490 years from the Exile till the destruction of the Second Temple and that Hillel became Nasi 100 years before then. Hence he regarded the number 390 as referring to the "period of wrath," to the activities of Hillel, the founder of the Rabbinites and, therefore, hated by the Karaites. *Idem.* p. 20; comp. P. R. Weis, "The Date of the Habakkuk Scroll," *JQR* (Oct., 1950) XLI, pp. 142, 151, 153.

CHAPTER IV: THE EMERGENCE OF THE BET DIN HA-GADOL

1. Cf. G. F. Hill, *Catalogue of the Greek Coins of Palestine*, (London, 1914), p. CIX; Narkiss, *Coins of Palestine* (Hebrew) (Jerusalem, 1936). See also above, Chap. II, note 8.

2. See SZ₈, p. 40; T-Z, pp. 11, 19, 44, 189.

3. The *Maamadot*, the inclusion of a democratic element into the aristocratic Temple service of the priests, may also have been established at this time. See SZ₁, p. 27.

4. *Ant.* 12.4.1; Pfeiffer, p. 11 ff.

5. T-Z, p. 11 ff.

6. Mal. 2-7. Similar verses depicting priestly authority are in Ez. 44, Hag. and Zech. See also Deut. 19.17 and 21.5 and II Chron. 31.4.

7. See commentaries on Mal. 2.7; Driver, *Introduction to the Literature of the O.T.*, p. 335.

8. See *Exc.* XIII.

9. I Macc. 14.28.

10. See *Exc.* VII.

11. See I Macc. 2.41, 4.59; 7.49; 13.52; also *Ant.* 12.6.2; 12.6.4; 12.8.7 for other Hasmonean activities. Cf. T-Z, p. 109 ff.

12. Midd. 1.6; Midrash ha-Gadol on Ex. 20, 24; Ab. Zar. 52b: בָּה גַּנוּ בְּנֵי חֶשְׁמוֹנָא אֲתָא אֱבֹנִי המזבח שׂקָּזָם מִלְּכִי עַזִּים. See also I Macc. 4.44; Cf. T-Z, p. 106 and cf. comment of M. Kasher, *Ha-Ramban v'ha-Mekilta* (N. Y., 1943), p. 30.

כִּי אַתָּה רְבִי דִּימֵי אָמַר בַּיּוֹם שֶׁל
חֶשְׁמוֹנָא גּוֹרוּ הַבָּא עַל הַכּוֹתִית חִיבָּעַלְיהָ מְשׁוּם נְשָׁנִיא. כִּי אַתָּה רְבִנֵּי אָמַר מְשׁוּם
נְשָׁגִינֵּן זְדֹה שְׁפָחָה גּוֹיָה זָוָה, אֲבָל מְשׁוּם אִישָׁוֹת לִתְהַלֵּה

W-P, II, p. 346, regards the court of the Hasmoneans as one appointed by Simon after his acquisition of princely power. Greenwald, p. 52, believes that Jonathan organized this tribunal. However, the parallel sources in the Talmud and Maccabees, regarding the activity of this Bet Din, show that it may have already been in existence in Judah's, if not in Mattathias', day. Cf. *ibid.*, p. 38. See Frankel₁, p. 43, I. H. Weiss, I, p. 108 and Brüll, p. 42 for different interpretations.

13a. I Macc. 9.73. Cf. Churgin₂, p. 199.

14. Cf. v. 28, 41; Geiger, (H), p. 77; Churgin₂, p. 97: העורה כולה נעשית ב' ב'.

Ben Sira's statement 38, 33, that "on the seat of the judges they do not sit . . ." also shows that only the aristocrats participated in the people's courts.

15. See *Exc. XIX*.

16. Comp. Halevy, Ic, p. 623, note 36.

16a. Jonathan was recognized as the representative of the Jews or as high priest. See T-Z, p. 167, note on 9.73 and p. 171 note on 10.20.

16b. Cf. T-Z, p. 44.

16c. The creation of the Great Sanhedrin by the decree of the Great Assembly is similar to the right conferred by the Persian king upon Ezra to establish courts. See Ezra 7.25. Thus, the establishment of the religious Sanhedrin needed state sanction. Comp. IH₁.

17. I Macc. 14.28. Comp. CAP, *ad loc.* and Pfeiffer, p. 19, note 15, concerning Ps. 110 with acrostic שְׁמֹעָן.

SZ₁, p. 23, dates the establishment of the Commonwealth in 142 B.C.E. In SZ₅, p. 84, note 235, he gives the date as 141 B.C.E., since Tishre 312 is regarded as the second year of the Seleucidean Era. Cf. T-Z, p. 226, note.

17a. I Macc. 14.41 ff; T-Z, p. 30.

17b. See *Exc. XXVIII Sec. 7*; Pinneles, p. 171.

18. The terms multitude, people (*demos*) etc., are stressed in the account of Simon's election. This portrays the democratization of the government. See above, Chap. II, notes 6, 7, 8.

19. Levy, *Jüdische Munzen*, p. 50. Cf. Pfeiffer, p. 19, note 16.

20. I Macc. 5.42; 7.12 (*grammateis*). Cf. Smith, p. 351; T-Z, p. 118, 138. Reisenberg, A., *Ancient Jewish Coins* (1940); CAH, Vol. 9, Plates IV, 2. i; P. Romanoff, "Jewish Symbols on Ancient Coins" *JQR*, XXXIII (July, 1942), p. 6. See also above note 1.

21. Abot. I. Cf. below *Exc. XVIII*.

22. Comp. Zunz, p. 39; "Als die Juden nach 25 — Jahrigen Kampfe ihre Unabhängigkeit und die Zionsburg errungen hatten, ward Simon ben Matatiats Fürst und Hoher priester und in Jerusalem wurde das synedrium errichtet (142 B.C.E.). See also Löw, I, p. 437.

תנן ה там משנת יוסף בן יועזר ויוסף בן יהונן איש ירושלים בטלו האשכבות.

23a. Sot. 9.9 based on Mic. 7.1.

23b. See *Exc. XV.*

24. Tos. Shek. 2.15 (177) ; Yer. Shek. 49a ; Sot 47b.

25. See K-GL for definitions. The following example will suffice: a) pros boule, "a declaration before the court" was interpreted (Git. 37a): — טרווּ בְּלִי וּבָטַוי אֲסֹתָּחִיקִי (— "a decree for the rich and poor"; b) — hypotheke, "mortgage," was interpreted (B.K. 11a): אֲסֹה תֵּהֶא קָאֵי "on this shall there be a lien"; c) — diatheke, "a will," was explained (B.B. 135b): זֶה תֵּהֶא לְמִקְםָ וְלִיהִוָּת — "from this shall it be set up."

25a. See *Exc. XV.*

26. The reading should be כל אשכבות שעמדו להן לישראל מימות משה עד ימות (שמח) יוסף בן יועזר היו למזרן תורה כמשה רבנן. Comp. Graetz.

27. See *Exc. XV.*

28. SZ₁, p. 25.

29. Sot. 9.15 ; Comp. Tos. B.K. 8.13 (Z: p. 362) : מימות (משחת) יוסף בן יהונן אשכבות יועזרו... בטלו האשכבות.

30. See *Exc. XV.*

31. Geiger p. 64 [(H.), p. 43] ; Moore I, p. 45.

32. I. Macc. 7.12 ff. ; LF₁, p. 57.

33. 65, 22 (Toledot) ; Yalkut Shimoni I, p. 115 ; Midrash Tehillim on Psalm 11, 7. קום איש צורות היה בן אחותו של ר' יוסף איש צרצה והוה רביב כספיא בשbeta. אויל קומי שריתא למצבבלא איל חמיה טומי זארביב מריה זוממי סומך דארכברך מרך. איל אם כן למצעיסיו קיז לעושי דצוננו. איל ואט כך לעושי דצוננו קיז למצעיסיו. נכנס בו הדבר כארס של עכנאי הילך וקיטים בעצמו ר' מיתות... נתגמנם יוסף בן יועזר איש צרצה וראה מטהו פראה באoir אמר בשעה קלה קומני זה לנון עוזן.

34. Hag. 2.7 חסיד שבכהונה.

34a. See T-Z, pp. 85, 138, notes *ad loc.*

35. Cf. J. Fishman "Tekufat ha-Hashmonaim b'sifrutenu ha-kedoshah" (1939), p. 76 ; Greenwald, p. 67 ; Klein, p. 45.

36. 9.54. In *Ant.* 12.10.6 (414), the death of Alcimus is set even earlier, i.e., before the death of Judas.

37. See Büchler, "Alcimus," JE, I, p. 332 ; Frankels, p. 405 ; Brüll, p. 15.

38. B.B. 133b-134a.

39. Löw, I, p. 421, similarly disregards the legend, but follows Zunz in placing Jose b. Joezer in the time of John Hyrcanus. See, however, Albeck's note in the Heb. ed. of Zunz' GV (p. 236) where he arbitrarily accepts the Gen. Rabb. legend. Cf. Albeck-Theodor edition of Bereshit Rabbah, Berlin, 1936, p. 742.

40. *Ant.* 13.2.5.

41. See full discussion by SZ₄, pp. 137-142 and Moore, III, pp. 8-11 (Note 4).

42. Geiger, (H), p. 22; Krauss₁, p. 359. See R. Marcus, "The Date of the High Priest Simon the Just," J-LCL, App. B. p. 732. Cf. Moore, "Simon the Righteous," *Israel Abrahams Memorial Vol.* (1927) pp. 348-364.

42a. *Ant.* 12.2.4.

43. *Yoma* 69b.

44. *Men.* 109b; *Yer. Yoma* 43d.

45. *Yer. Yoma* 5.2; *Tos. Sot.* 13b (319); *Par.* 3.5.

46. *Ned.* 9b; *Tos. Naz.* 4.7 (289).

47. *Yoma* 39b.

47a. See R. Simon Duran, *Magen Abot* who asserts: לא נחפרש בשום מקום למה נחיה שם זדיק יותר מאשר תנאים כי כולם היו זדיקים.

48. Cf. di Rossi, Chap. 22; Löw, I, p. 399-449.

49. Herzfeld regards Simon the Just in the different sources as the son of Hillel, living in 41 C.E. when Caius Caligula was killed. Cf. di Rossi, p. 216.

The sources (*Sot.* 33a, *Tos. Sot.* 13.6 (319); *Yer. Sot.* 24b) point to a Simon in the time of Caius. (See SZ₅, p. 89). Some scholars (Cf. JE, XI, p. 352 s.v. "Simon") even claim the title for Simon son of Gamaliel. Graetz₁, IIIb, p. 739, note 19, applies it to Simon, son of Boethus of the house of Kontros or Kathos, whom Agrippa appointed as high priest.

50. 2, 65.

51. *Ibid.*, 14.5.

51a. *Ibid.* 14.14.

52. *Ant.* 13.6.7.

52-1a. I Macc. 14.47; 51.

52-1b. I Macc. 14.2.

52a. *Op. Cit.* (H), p. 18. Klausner in the preface, p. 28, opposes that view. See, however, *ibid.*, p. 23, note 1; Krauss₁, p. 359.

52b. Cf. *Ant.* 13.10.5 (289); *ibid.*, 13.16.1 (406) as applied to John Hyrcanus and Alexander Jannai, the successors and descendants of Simon.

52c. *Sifre*, 352 on Deut. 33.16 — זה ורעו של אהרן — זה זדיק וויב — זה.

52d. LXX translates שׁ as *archon* or *hegemon*. In I Macc. Simon is called *hegemon* (13.42; 14.35; 14.41) and *ethnarch* (14.45; 15.1.2). The original Hebrew may have been שׁ.

52e. I Macc. 13.42.

53. SZ₄; T-Z, pp. 7, 44.

53a. J. Guttmann, "Ansche Keneset hagedolah," *Hashiloah* XXI, p. 314, shows that the only reliable source for the Great Assembly is Abot, but he limits the existence of the body to the Ezra period and explains here as being used to designate those who continued the work of Ezra's נשיiri.

assembly. RM p. 7 n, suggests that משרי refers to the dwindling of the 120 in the Great Assembly to the number of 70 in the Sanhedrin. See however *Exc. XIV.*

54. I Macc. 14.28; T-Z, p. 227, note.
55. *Ant.* 12.3.3.
56. Comp. LF₂, p. 293 (*ekklesia* [sic.]); LF₁, p. 55.
- 56a. I Macc. 14.27.
- 56b. Cf. T-Z, p. 248. See also Smith, p. 205.
- 56c. Comp. Ezra 10.14 and LXX *ad loc.*, *archontes . . . synagogogen*. Comp. also I Chron 21 Ezra 8.24; משרי ירושאל or משרי הכהנים סופר זקן נשיא or were adopted by the Rabbis as titles, so שׁ may have been used in tannaitic literature. See Mek. (ed. Laut.) II, p. 166 (Tractate Amalek III, p. 60): רבי אלעזר המודע אומר שׁ היה כען שנא' ובני דוד כהנים היו שׁ הטבחים ונגיד. In Gen. 37 and 40 we have also the same words in II Chron. 25 and Jer. 40. Cf. Geiger, *Nachgelassene Schriften IV*, p. 286.
- 56d. Mid. 1.6; Meg. 11a.
- 56e. Ps. 68.32 and LXX *ad. loc.* See Ibn Ezra *ad. loc.*; סגנונים חשמונאי: ענינו גדולים וחשובים וכן חשמונאי ובנו. Comp. also *Metzudat Zion*, *ad loc.*: See, however, Klein, p. 248.
- 56f. T-Z, p. 249.
- 56g. I Macc. 13.42.
- 56h. *Ibid.*, 14.27. Cf. Derenbourg, p. 451, Note III; Klausner₁, III, p. 75.
- 56i. Abot I.
57. See *Exc. XIV.*
58. Yer. Sot. 24b: משעה ששמעון הצדיק בת קROL... מעשה שיצאו נערים להלחם... ושמע יוחנן כי גן.
59. The reading which mentions first Simon and then Johanan is correct. See Moore, III, p. 127. ". . . The position of the anecdote (before the oracle received by John Hyrcanus) shows that the connection with Simon the Righteous determined the order in the compilation of the instances in the Talmud." Comp. however, Sot. 33a: יוחנן כי גן שמע... ושוב משעה ששמעון הצדיק and Tos. Sot. 13 (319). See below note 81.
60. Sot. 33a. Hyrcanus' incident is also recorded in *Ant.* 13.10.3.
61. Yoma. 9a: שנה יוחנן כי גן שנה שמעון הצדיק מ שנה יוחנן כי גן שנה. These dates may refer back to the period which led to the Hasmonean Revolt against the old priestly rule of the gerousia. This is about 175 B.C.E. Hence, Simon lived 40 years thereafter (died 135 B.C.E.) and John Hyrcanus about 80 years later (104 B.C.E.).
62. Par. 3.5; Yer. Shek. 48a: שמעון הצדיק ויהונן כהן גולש ששו שתים שנים.
63. Maimonides, *Tad.* Hilkot Maaser, 9, followed a similar view: יהונן כי גן שהיה אחריו שמעון הצדיק.

64. Meg. 11a (with reference to Lev. 26.44).

65. See *Exc. XVII.*

65a. The *Vav* in each word is explanatory: "to wit," "und zwar," "et —quidem." See Gesenius, *Hebrew Grammar* (ed. 1910), p. 484, note 1b. Thus in Deut. 19.17: *לפנֵי הכהנים והשופטים אשר יחי בימים ההם ויצאו זקניך ושופטיך... והוירדו זקני העיר... ונגשו וזרעו השופטים ויצאו זקניך ושופטיך... והוירדו זקני העיר... ונגשו וזרעו השופטים הכהנים... ועל פיהם קהיה כל ריב...*

לראיש הוינו הוא וייו הבואר זקניהם שם שופטיך ריל מסנהורי גודלה שר'ש סיל שהוא ואיו הבואר לבך כמו נבלת וטרפה לא יכול שפ' נבלת שיש במינה טרפה.

See also M. Kapustin, *Der Mischnatraktat Schebi'ith*, Frankfurt a. M., 1934, p. 29 for examples.

65b. I Macc. 14.29; T-Z, p. 44.

66. The Roman period in Jewish history does not begin till Pompey's appearance (63 B.C.E.).

67. 2.65: *aner boules estin.* On "Father of the Court" see below Chap. VI, Sec.: "How the Titles were used."

68. Ant. 11.6.3.

69. Ab. d. R.N. 5, p. 13b; E. Baneth, *Ursprung der Sadducaer und der Boethuser* (1882). Cf. Laut.4, p. 91.

The suggestion (LF₁, pp. XI and 42) that Simon the Just and Antigonus of Soko were regarded as authorities in both Pharisaic and Sadducean circles may be accepted only if we remember that till 141 B.C.E. the gerousia was the all functioning body in the state. Hence there were no partisan views then (לא הייתה מחלוקת בישראל). With the emergence of the Zugot, differences of opinion become evident. Comp., *idem.*, p. 52, note 145: ואולי הייתה קבלה בזעם (של חוויל) שוג שמעון וצדיק וגנטיגנוס היה לסת בני זוג אלא שלא נזכרו מפני שלא נתפארו המפלגות בזעם.

70. Ant. 13.5.9.

71. Comp. SZ₁, pp. 25, 214, note 26.

72. Ant. 13.14.5.

72a. Friedlander, p. 443 ff; Allon₂, p. 309; Greenwald, p. 37, note 56.

72b. I Macc. 14.14.

73. Comp. Frankel₁, p. 32 and Churgin₂, p. 67. Lilienblum I, p. 15, interprets *ke-bel* as "receiving the position" and not merely "acquisition of the tradition." See *Exc. XVIII.*

73a. Comp. also view of Brill, I. H. Weiss and Yawitz as summarized in LF₁, p. 40, notes 132; Laut.4, p. 253.

74. Herfords, p. 25; cf. Moore, III, p. 43. Albeck₂, p. 236, accepts arbitrarily the reading *כלבו* *מןנו* despite the general readings. See Taylor, *Abot* and also note by Herford in CAP, II, p. 691. Hoffmanns, p. 125, believes that there is a hiatus in the Mishnah. Originally it had also *צוק וביתוחן*. Because of the apostasy of their pupils, these were deliberately removed but the phrase *כלבו מזם* remained.

וכיוון שעלה עורה וזרובבל והבטלה עמהם ובנו בית המקדש והיו שם ראשי סנהדרין כגון שמעון הצדיק ואנטיגונוס הצעיר Cf. Laut.₄, p. 196 and especially p. 253.

75. Comp. Sherira, *Iggeret* (ed. Lewin, p. 73):

וזרובייל עמום ובנו בית המקדש והוא שם ראש סנהדרין כגון שמעון הצדיק ואנטיגונוס

הצעיר עמום ושרו אוטון הוגון Cf. Laut.₄, p. 196 and especially p. 253.

76. Comp. Greenwald, p. 39.

76a. Cf. SZ₁, p. 69.

77. I Macc. 14.42-43.

77a. See *Exc. XVIII*.

78. Cf. Frankel₃. It may be argued that since Simon Hasmonean died in 136-135 B.C.E., he flourished and served in a period much later than that of Antigonus of Soko. Hence, the "Simon the Just" who transmitted the tradition to Antigonus could not have been "the Hasmonean." However, even if we believe that Simon the Hasmonean died after Antigonus of Soko and after Jose b. Joezer, it does not necessarily mean that the latter two did not receive the authority from Simon. It may be that Simon, as head of the state, gave them power to be the active teachers of the law since he himself was concerned with political matters, but he outlived the first Zug. Perhaps, he even saw the functioning of the second Pair. Having organized the Great Sanhedrin, Simon the Hasmonean allowed capable teachers to function therein without personal interference.

79. Zunz, p. 37; Munk, *Palestine*, p. 194; Moore, III, p. 9. See next note.

80. Derenbourg, pp. 83, 86, believes that John Hyrcanus established the new Sanhedrin when a breach with the Pharisees occurred. This cannot be accepted because the rift came in the days of Alexander Jannai and not in the time of John Hyrcanus. Compare Friedlander, but see LF₁, p. 84.

81. Cf. SZ₁, p. 61 and especially SZ₁₃ for the activities of John Hyrcanus.

Tos. Sot. 13, 10 (320) reads רבן יוחנן בן זכאי אף הוא גור על היזורי וביבט את הדתאי. Aptowitzer, *MGWJ*, (1908), p. 744 accepts this reading. However, it may be that a scribe mistook יוחנן ב'ז' for יוחנן כ'ג and also erred by reversing the order of the correct reading: גור על הדתאי וביבט את היזורי. John Hyrcanus, as head of the state and of the Temple, was vitally concerned with the tithes of the priests and Levites and the income of the Temple. Therefore he decreed these measures. Maimonides in his introduction to his Mishnah Commentary, Zeraim, Chap. 6 states ויהוחנן כ'ג הוּא יוחנן בן מתחתיו היזוע הנזכר בתפלות בגדלו במלחמות מלכי יון. Presumably it should be "grandson" and not "son."

ובמיון אין צורך לשאול על הדתאי שטעמץ זוגות.

83. Comp. Abr. Krochmal, *Yerushalayim ha-benuyah* (1867), p. 54 who suggested that the reading should be העמיד זוגות "he established restaurants" to assure observance of the tithes (*sic!*).

84. Cf. Frankel₁, p. 33; Kuenen, p. 158.

משבא אלעזר בן פחרה ויהוֹהָה בן מִתְורָה הַיּוֹן נוֹטְלִין אֶתְחַד בְּזָרוּעַ 84a. Yer. Mass 56d records: The names seem somewhat closely related to the personalities in the story of the rift of the Pharisees and Sadducees in Kidd. 66a and in *Ant.* 13.14.5, (288).

85. Ber. 48a; Yer. Ber 11b.

85a. See above, note 80.

86. I Macc. 15.21 reveals that, in accordance with the treaty between the Romans and Simon the Hasmonean, rights of extradition to Judea were established, so that violators might be punished "in accordance with their law." This may be a further reference to the jurisdiction of the newly established Sanhedrin. See T-Z, pp. 42, 234. Comp. NHWB, III, p. 553b: "das selbe warhr erst zu zeit der Makkabaer constituert. . . ." See above, note 11.

CHAPTER V: THE PRESIDENCY: ZUG OR HIGH PRIEST

1. Hag. 2.2. Cf. Derenbourg, p. 117; CT-H, IV, pp. 165, 262.

2. *Geschichte*, II, p. 257.

3. *Ibid.*, p. 258, note 68.

4. מֵץ הַשִּׁבְחוֹה בָּרָאשׁ וּמִינָּהוֹ נְשִׂיא עֲלֵיכֶם.

Pes. 66a; Cf. Tos. Pes. 4 (162); B.M. 85a; Yer. Pes. 33a. זָמְדוּ וּמִינָו אֶתְחַד שְׂשִׁיא עֲלֵיכֶם. See *Exc.* XXIII.

4a. Shab. 31a: אֵל אתה הוּא הַל שְׁקוּרִין אֶתְחַד נְשִׂיא יִשְׂרָאֵל.

5. Shab. 14b: הַל וְשָׁמְעוּן גָּמְלִיאֵל וְשָׁמְעוּן נָהָגֵן נְשִׁיאָתָן בְּפִנֵּי הַבַּיּוֹת.

6. SZ₉, p. 12.

7. Ta'an. 2.1; Ned. 5.4; Eduy. 5.6.

8. See the works of Kuenen, Schürer and Bacher.

9. Hor. 13b: בַּיּוֹם רְשָׁבֵג נְשִׁנִית מִשְׁנָה זוֹ. רְשָׁבֵג נְשִׁיא רִימֵחַם וּרְגַג אֲבִיךָן.

See below Chap. VIII.

10. Cf. B-HDB; CT-H, IV, p. 268.

11. Hag. 2.2.

12. Shab. 15a; Eduy. 1.1. Cf. SZ₁₄, p. 96.

13. Mak. 5b.

14. Eduy. 5.6.

14a. *Ibid.* See above note 4.

15. Peah 2.6; Hag. 2.2.

16. Taubes, p. 23.

16a. See *Exc.* I.

17. *Ibid.* See also notes thereon; Derenbourg, p. 189; Loeb, pp. 188-201.

18. See also *Against Apion* IV, (187). The high priest is regarded as holding the leadership of the state — "Prostastes tou ethnous." See J-LCL, VII, p. 85, note. Cf. Lieberman₁, p. 65; Juster, I, p. 443, note 4.

Büchler, p. 20, declares "Hatte Josephus den jeweiligen Hohenpriester gemeint, so hatte 'o archiereus stehen müssen, da ja immer nur einer wirkte. Sonnach ist auch dieser Meldung klar, dass die Prostastia nicht in der

Hand des Hohenpriesters ruhte sondern in den Händen der eine Körperschaft bildenden archiereis." Schürer's view that *archiereis* is to be taken as the categorical plural is more plausible. The meaning would be that the *prostastes tou ethnous* was in the hands of the contemporary high priest. The high priests were the administrators in the government and not necessarily members in the judicial Sanhedrin. Comp. CT-H, IV, p. 228.

19. See above Chap. III and *Exc. XIII*.
20. *Synedrion* is not mentioned here. The passage reads: *kai episystrechai systrophen* — "gathered together."
21. Cf. SZ₁, p. 78.
- 21a. See below, *Exc. XXIX*. Sec.: "Mishnah and Gospel Discrepancies."
22. *Ant.* 14.9.3.
- 22a. SZ₁₂; *idem.*, JQR, XXXVII, p. 96.
- 22b. Comp. CT-H, IV; p. 226, note 9 end.
- 22c. *Acts* 5, 34-39.
הورو ביד... הורה כהן מישח וככ'... הנשיה כיווץ בהן... ר"ע אומר: 1-2.5: הנשיה חיב בכולן... שהמלך לא דין ולא דין אותו ואיזהו נשיה זה המלך שני' ועשה אתת מכל מצחתה ה'... נשיה שמי על גביו אלא ה'
23. *Ibid.* 3.3.
24. *GJV*, II, p. 258.
- 25a. אשר נשיא יחתא
ואיזו דבר של אותה העיר בנון רחבה והכותב חילקו לאזכרנו בנשיה refers to the domain of the patriarchate, as explained, אלא בותה.
26. *Yoma* 52b, *Tos. Sot.* 13.1 (318) שמן המשחה. See SBH₃.
- 26a. Comp. LF₁, p. 16.
27. 45, 46 ff; Cf. Moore, III, p. 16.
ואיזהו נשיא נשיא ישראל ולא נשיא שבטים.
28. *Hor.* 2.2 (475).
29. *Yoma* 7.5.
30. Rabbinovicz, *ad loc.* אין נשלין בו לחיות... אלא למלך ולבית דין.
Cf. Buchler, p. 169.
31. *Einrichtung*, p. 81.
- 31a. *Ezra* 2.63; *Neh.* 7.65.
- 31b. *Ant.* III, 214.
- 31c. 105 B.C.E. See *War* 1.69.
משמעותם הראשונים וראשונים בטלו אורחים ותוממים.
- 31d. *Sot.* 9.12.
32. See *Exc. XIII*.
33. *Hag.* 2.2. הרשונם היו נשאים ושניהם להם אבות בית דין.
34. Above, note 5.
35. Above, note 4.

CHAPTER VI: RIVAL SCHOOLS

1. Cf. Juster, I, p. 392, note 2 for the general titles.
- 1a. See above Chap. IV. Sec.: "Results of the Hasmonean Revolt."
- 1b. Comp. Laut.1, p. 177; Laut.4, p. 92, 97.
- 1c. After the death of Herod: *War* 2.8.14.
- 1d. Comp. LF₄, p. XI: "In the early days of the Hasideans, and even among the Pharisees and the Rabbis before the destruction of the Temple, Sadducaism was not yet regarded as apostasy."
- 1e. Comp. Geiger (H), p. 97 ff. In *Ant.* 13.10.5, speaking of Hyrcanus, Josephus remarks: "They that were worst disposed to him were the Pharisees."
2. LG₂, p. 14; *idem.*, *HUCA* (1924), pp. 307 ff.
3. LF₂, pp. 42, 304. Also LF₁, pp. VI, 77 note 236.
- 3a. Cf. Scholion, *Meg. Ta'an.* X.
- 3b. 14:20, 28, 44, 47.
4. SZ₁, p. 199. LF₃, p. 705 believes that the respective power of the two groups within the Pharisaic sect varied according to the number therein or to events. Thus he seeks to explain that Hillel was an *Ab Bet Din* (Shab. 17a) *אonto היום היה היל כטוף לפניו שמא כאחד מן התלמידים* and that Judah ben Tabbai refused the presidency. This is based on *Toledot Tannaim v'Amoraim* ed. Kahane and Ab.d. RN., 1st version, chap. 10.
5. LF₂, p. 43; also LF, "Introductory Study to Pirke Abot," *JBL*, LVII (1938), p. 13.
- 5a. See previous notes and comp. LF₁, p. 65:
רק מדור יוסף בן יועור ו يوسف בן יהנן ואילך התחילו חברי המיעוט לעמוד על דעתם ולסרב להכנע לדעת הרוב. וכך נתנווה המחלוקת בעניין סמיכה ובכובב הימים נתנווה המחלוקת בישראל.
- Comp. also LF₄, pp. 235-8 and note 23 ff; also Bokser p. 58.
- 5b. LF₄, p. XLI, remarks "... Pharisees sat in the Sanhedrin though a majority of its members and its president were Sadducees." This is true only for the period before Simon ben Shattah; not thereafter. See end of *Exc. I.*
- 5c. Scholion, *Meg. Ta'an.* X.
6. Comp. SZ₁, p. 139; SZ₆, p. 32. See below Chap. VIII.
- 6a. *Ant.* 18.1.5; *Nid.* 33a. Comp. Herford₂, p. 95.
- 6b. See *Exc. XVIII.*
- 6c. See also Eduy. 1.5: *ולמה מזכירים דברי היחיד בין המתובין*.
7. Yer. Hag. 77d: *אל הסמיכה בלבד*: Cf. Newman, p. 11. See Albeck, pp. 393, 511.
8. Tos. Hag. 2.8: *מי מיהם לא נחלקו אלא על הסמיכה בלבד חמשה זוגות הן*. שלשה מזוגות הראשונים שאמרו שלא לטמוך היו נשאים ושניים להם אבות בית דין.

Gandz, p. 30, n. 87, regards the passage לא נחלקו יزا מנוח נכוּת הראשוניים שמאַיַּה as a later addition. Jelski, p. 39, believes that the phrase ושייאַים ושניאַים לְזַמָּן אַכְ' is also an addition. See discussion above, Chap. V. Comp. LG₂, p. 39.

9. SZ₇, p. 39; See Lilienblum who interprets the Semikah controversy as ordination. Cf. also Sidon, p. 358; Frankel, p. 30, 43; I. H. Weiss, I, p. 103; Graetz, III, p. 7.

10. See *Exc.* 1.

11. Hag. 2.7. חסיד שבכהונה.

12. Sifre Zuta p. 428; Yalk., Hukat, 761.

13. Par. 3.5: גמי עשאן שמעון הזריק ויוחנן כייג.

13a. See Rashi, Numb. 19:3: cf. Sifre, *ad loc.*: מצוותה בסוגן; see also Yoma 42b: ולזרות — בכהן היוט.

14. Par. 3.7; Tos. Par. 4.6 (633) and compare with Sifre (ed. Horowitz) Numb. 123; ווקני ישראל היו מקודימים. See Liebermans, III, p. 233. Comp. also *ibid.*, p. 236, note 24.

15. See *Exc.* XIX.

16. Cf. SZ₆, p. 21, 26.

16a. Scholion, *Meg. Ta'an.* X; Cf. LG, "Alexandra," JE, I, p. 360; Moore, I, p. 261.

16b. Tos. Hag. 2.8 (p. 235) שאמרו לסתור היו נשיאים:

16c. Kid. 43a.

17. See *Exc.* XXI; SZ₁₄, p. 96.

18. See *Exc.* XV.

18a. See *Exc.* XXIII.

19. B-HDB, IV, p. 401; Moore, III, p. 16. See discussion, above, Chap. V.

19a. E.g. 12,12; 44, 3 ff.

20. JE, XI, p. 43.

20a. Sanh. 1:6: ושפטו העדה... עודה שופטת ועודה מצלחת.

Yoma 37b: אמר ר' אביהו וכל העדה זו סנהדרין.

21. Sifre. Deut. 41 (ed. Weiss) 19a.

21a. LF₁, p. IX; SZ₉, p. 11, maintains that Rabbi Judah was the first to be called by the name "Nasi"; Greenwald, p. 45 believes that Hillel was the first to bear the title (Shab. 31a).

22. Hillel's appointment by the Bene Bathra shows that the position of Nasi pertained to the body itself in session מיד הוшибו בו בראש ומינווהו נשיא עלייתם.

The body chose its own presiding officers. Comp. LF₁, p. 9, note 67; *idem.*, p. 23: אביך זה שנבחר לראש כל הפרוושים נקרא כנראה הנשיא שליהם.

23. Cf. Löwn, p. 15. See *Exc. XXIII.*

23a. Tos. Shebi. 3.7 (64) : שמאַי הָזָקָן אָמַר אִילּוּ הִתְהֵה שָׁעָה פְּנוֹיה גּוֹרָא אֲנִי עַלְיָה... בֶּן שְׁלָאָחָרִיו גּוֹרָא עַלְתָּה.

See also Shab. 17a. וְאוֹתוֹ הַיּוֹם הִיא הַלְּלָה (שְׁמָאַי) אָמַר תְּקִנִּיטִינִי גּוֹרָגִינִי... כְּפֹף וַיּוֹשֵׁב לִפְנֵי שְׁמָאַי כְּאֶחָד מִן הַחַלְמִידִים.

The majority gained by the Bet Shammai for the "Eighteen decrees" (Shab. 16a) was extraordinary, due to the emergency of the war of 65 C. E.

23b. Hag. 2.2 notes הַלְּלָה וְמַנְחָם לֹא נַחֲלָקָו יִצְאָה מַנְחָם that with Hillel's victory over the Bene Bathra, the two party system in the Sanhedrin was nearly dissolved. Hence there was no need any more of an Ab Bet Din. This is the meaning of לא נַחֲלָקָו — יִצְאָה מַנְחָם. However, the immediate attempt at the abolition of the minority office was unsuccessful. The two party system was re-installed with Shammai's persistence, *ונְכָנָס שְׁמָאַי*. See previous note showing Shammai's power.

The success of the Hillelites in abolishing the minority office of Ab Bet Din came finally in the next generation. Thus the Mishnah Hagigah dealing with the Semikah controversy hints also at the struggle to dissolve the Ab Bet Din office. Concerning the "natural" line of office see Newman, p. 12, note 1 and see *Exc. XVIII.*

23b-1. See Allon₄, p. 296, who explains "Sanhedrin" as "Beth Midrash."

23c. See *Exc. XXI.*

24. Shab. 15a. According to Lilienblum, the Sanhedrin then became a religious body and hence there was no need for an Ab Bet Din (the political head). Titles of Rabbi were then given, through ordination, insuring the Sanhedrin as a religious body. See, however, below Chap. VII. Sec.: "Titles of the Members."

24a. Cf. Newman, pp. 10, 11; Hyman, I, p. 305.

24b. See below Chap VIII.

25. See *Exc. XXIII.*

26. Sanh. 11.2: לשכת הגזית שמנוי יוצאת תורה לכל ישראל.

CHAPTER VII: THE MEMBERSHIP

1. Cf. Deut. 17.8-12; 33.10; Ez. 44.23; Ezra 7.25. *Grammateis* (שׂוֹטָרִים) meant "officers." See I Macc. 5.42; Diesmann, *Bible Studies*, p. 110; W-P, II, p. 345; T-Z, p. 118; Smith, p. 351; Newman, p. 82, ff.

2. Mal. 2.7 כִּי שְׁפָתִי כָּהּ יִשְׁמְרוּ דָעַת וְתֹרַה יִבְקְשׁוּ מִטְהָרָה.

3. See above Chap. VI.

4. Based on Ex. 18.21. Cf. R. Margolit, "The Requisites for Appointment to the Sanhedrin" (Hebrew), *Sinai* X (1946-7) p. 16.

4a. This is evident from the various mishnaic rules of acquittal and conviction (Sanh. 4.1); e.g., דין נפשות מחזרין ליכוח ואין מחזרין לחובנה.

See *Exc. XXIX.*

תניא אין מושיבין בסנהדרין ז肯 וסריס ומילשין לו בנים ז肯 שלא ראה לו בנים.

Hor. 1.4: א"ר יוחנן אין מושיבין Sanh. 17a; Tos. Sanh. 8.1 (427) ; Yer. Shek 48a: בא"ר קומה ובעליה כהמה ובעליה זקנה ובעליה כספם ווועדים בשבעים לשון שלא תהא סנהדרין שומעת מפי תורגנתן.

Though the understanding of "seventy languages" was a prerequisite, only two had to possess a speaking ability. In the court of Jabneh there were four "linguists." See Sanh. 17b (Cf. below note 49).

The word, *לדבר*, however, may refer to a special knowledge of the Law, i.e., two members, at least, had to be experts; the others possessed only a general knowledge. The talmudic remarks about "seventy languages" is only a later commentary. See below, note 48. Cf. Lieberman¹, p. 15; "Judges," JE, VII, p. 376; Cf. Newman, p. 86 ff.

6. The Amoraim may have specified these qualities to ascertain the merits of their own judges. See, for instance, the complaint against Rabbi Judah II for appointing "unworthy judges" (Yer. Bik. 65d).

6a. See, e.g., the story (*Ant.* 14.9.3) of Sameas blaming his colleagues for lack of courage, or the incident recorded in the scholion, *Meg. Ta'an.* X, concerning the eviction of the Sadducees by Simon ben Shattah.

6b. *De Specialibus Legibus*, IV. Cf. Goodenough, p. 193, 205; On the value of Philo's treatise, whether based on the adaptation of Jewish courts in Alexandria to the laws of the Greeks and Romans or whether idealistic and homiletic or applicable to the Halakah, see Heinemann, *Werke*, II, p. 199; Belkin, 7 ff and SZ₁₄, p. 92.

7. Sanh. 2.1: כהן גודל דין ודניין אותו.

8. Sanh. 2.2. המליך לא דין ולא דעתינו אותו; Tos. Sanh. 2.15 (418); Sanh. 18b אין המליך יושב בטנו ארין. See Guttmann, p. 86.

הכהנים הלוים ואל: לפני הכהנים והשופטים: Deut. 19.17: ולא יהיה יושב במקומו של ראשון אלא יושב במקום הראווי לו. גשומט.

8b. Ezra 7.25 ff.

9. See *Exc. XXII.*

10. 4.4: ושלשות של תלמידי חכמים יושבין לפניהם כל אחד ואחד מכיר את מקומו... היו צריכין לסמוך סומכין מן דראשונה. אחד מן השניהם בא לו לדאשונת זאהד מן השלישית בא לו לשניה ובוררין להן עוד אחד מן הקהל ומושיבין אותו בשלישית ולא היה יושב במקומו של ראשון אלא יושב במקום הראווי לו.

11. See below Chap. VIII.

12. 2.9 משם שולחין ובודקין כל מי שחכם ועניו ושפוי וירא חטא ופרק: טוב ורוח הבריות נוהה הימנו עוזין אותו זיין בעירו ומעלון ומושיבין אותו בהר הבית משם מעלון ומושיבין אותו בלשכת הגזית.

זken אין מושיבין אותו בלשכת הגזית אלא אייכ געעה: Tos. Shek. 3.27 (179) דזיין בעירו... מעלון אותו ומושיבין אותו בהר הבית ומשם מעלון ומושיבין אותו בלשכת הגזית.

13. B-HDB thinks that the Tosefta passage cited in the name of Rabbi Jose ben Halafta refers to the period before the destruction of the

Second Temple because Lishkat ha-Gazit is mentioned therein, whereas the account in Mishnah Sanhedrin concerning the three rows pictures the scene in Jabneh. P. Dikshtein, *Hatekufah*, XXV, pp. 667-668, believes that the power of selection rested in the hands of the Naai.

14. See above note 12. Concerning the rows, see also Sanh. 3:9: ר' יוחה אומר כל עיר שיש בה שלוש שורות של כיג ורואה לשות טנהורין

15. See below, Chap. X.

16. Sanh. 13b; Yer. Sanh. 19a: בראשונה היה כל אחד ואחד ממנה את תלמידיו... חזרו וחלקו כבוד לבית הזה ואמרו בז' שמינה שלא לזרע הנשי אין מנוי מנוי. ונסיא שמינה שלא לזרע הבז' מנוי מנוי. וחזרו והתקינו שלא יא בז' ממנה אלא מזעת הנשי ולא קא הנשי ממנה אל לא מזעת בז'

Cf. Newman, p. 12. Also Z. H. Chayes, *Ateret Zevi* (Zolkiew, 1884): משפט הוראה, עמידה למניין בבז' שבשלכת הגיטה איך היהת

Concerning the choice by lottery, see Belkin, p. 182. This method was perhaps used only in "community judging" where the lottery was possible in accordance with the dictum העודה ושותפטו. The *קלפי* is referred to as Moses' policy, though he, as the head, appointed the judges. Lottery was used only in cases of doubt.

16a. For the history of Semikah and its problems, see H. D. Bornstein "Mishpat ha-Semikah v'koroetha," *Hatekufah* IV, p. 399; A. Sidon, "Die Controverse der Synedrialhaupter," *Gedenbuch zur Erinnerung an David Kaufmann*, Breslau, 1900, p. 358. Cf. also Barons, Vol. II, p. 419 n. 44.

J. Newman, *Semikhah*, Manchester, 1950, p. 9 ff. discusses the problem of the "unbroken link of ordination" from Moses and the resumption in talmudic times. See also SZ25, p. 371.

16b. Cf. Num. 27.23. Cf. A. Schwarz, "Die erste halachische Controverse" *MGWJ*, Vol. 37 (1893), pp. 164 ff., 201 and D. Feuchtwang, "Noch einmal die erste halachische Controverse," *ibid.*, Vol. 38, pp. 385, 433.

17. Cf. Newman, pp. 5, 102 ff.; Lauterbach, "Ordination," JE, IX, p. 428; IH₁, p. 24. See A. Epstein, "Ordination et Autorization," REJ, XLVI (1903), p. 197; W. Bacher, "Zur Geschichte der Ordination," *MGWJ*, Vol. 33 (1894) p. 123; SZ₂₁, p. 298 ff. Comp. views on Semikah controversy by Lilienblum and Albeck₁. See also entire text of Yer. Sanh. 19a and particularly תמן קרייה למנייה סמיכה.

Comp. also the text of Midrash ha-Gadol on Numb. 27, 18, which reads וא"ז ממנה שלא בז' למנייה instead of בז' למנייה.

18. See IH₁, p. 24-30; Newman, p. 106.

18a. Sanh. 4:3: טנהורין היהת בחזי גורן עגולה כדי שיהו רואין זה את זה ושני סופרי הדיין עומדים לפניו... ושלש שורות של ת"ח יושבי לסתו... ולא ראשון

19. Josephus' mention (*War.* 5.13.1) of a scribe of the *boule* refers only to a member of the city council.

20. Sanh. 4.4; Sanh. 37a; Yer. Sanh. 19c.
 21. B-HDB; Lauterbach₂; Büchler, p. 111.
 אמר ר' אלעזר בר צדוק כשהיה רבן גמליאל יושב (427) ביבנה.
 22. Tos. Sanh. 7.8 (426).
 אמר רב יהודה אמר רב אשי גוורי גורות שבירושלים היו נוטלין שכרן תשעים וחמש מתרומות הלשכה.
 23. *De Spec. Leg.*, IV, 62; cf. Belkin, p. 181.
 24. See Sanh. 17a and Midrashim on Ex. 18.21.
 24a. Pes. 66a.
 24b. Hag. 2.2.
 25. Mak. 5b.
 26. Kid. 4.4: אין בודקין מן הסנהדרין ולמעלה.
 אין הכל כשרים לדון דין: נפסות אלא כהנים לויים וישראלים המשיאן לכחנה.
 או שהיה אחד מהן גור או ממזר או נתן. See, however, Sanh. 34b; Newman, p. 90.
 29. Ar. 2.4.
 30. See Midr. Tannaim, Deut. 17; Yeb. 45a. Belkin, p. 187, believes that proselytes of the first generation were ineligible as magistrates in Israel. Cf. Geiger p. 114.
 30a. See above, Chap. VI.
 31. See Hag. 2.7; Ber. 48a; Yer. Ta'an 67d. Josephus and Philo, in their idealistic descriptions based on the Bible, also speak of priestly composition. Cf. Newman, p. 67 ff.
 31a. Ber. 48a: *אַיִתְחִיתָה לְשָׁמֹעַן בֶּן שְׁתָחָא חֹוה*.
 32. Yoma 71b: *וַיְהִי בְּנֵי עַמּוֹן לְשָׁלָם*. Rashi *ad loc.* follows the text of Git. 47b and Sanh. 96b: *תִּירְמְבָנִי בְּנֵי שָׁלָם חֲרֵב לִימּוֹן הָרָה בְּרַכִּים*. ומאן ניהו שפיעא ואבטילוין.
 Comp. Greenwald, p. 56, note 53. Derenbourg, p. 118, already suggested that the phrase meant "of the people."
 33. Yer. Ta'an. 68a: *אֵר לוּ מִגְּלַת יוֹחָסִין מִצָּאוֹ בִּירוּשָׁלָם וְכַתֵּב בָּה הַלֵּל* מִן דוד. Cf. Levi, p. 143.
 34. II Chron. 19.8.
 35. Sifre Deut. 17.9: *תְּלִי וְאֶל הַשׁוֹטֵט אַעֲזָב* שאין בו כהנים כשר. מצות ב"ז היו בו כהנים ולויים יכול אם אין בו פסול. The opening passage speaks of the Bet Din of Jabneh. It may be inferred that in the earlier Sanhedrin there were only members of the aristocracy. Later, other classes were included.
 The need for aristocracy is also emphasized in a later tradition, in Yeb. 88b: אמר רב חדא בחרילה לא היו מעמידין שוטרים אלא מן הלוים שנא: ושופטים הלוים לפניכם עכשו אין מעמידין שוטרים אלא משראל שני' ושופטים בראשיכם.
 36. In Kid. 23b and Ned. 35b, the question is raised whether the

priest was שְׁלִיחַ זָהָרֶת אֵלֶיךָ. In Yoma 1.5, however, the priest is called שְׁלִיחַ בֵּין. See discussion of priestly representation in Newman, p. 80-1.

37. Cf. above, Chap. VI and note 4 therein.

38. Ch. X.

39. Sanh. 52b: זָמֵר רֹב יְקָרִים בֵּין שְׁלֹזְקִים גַּת.

39a. Ant. 18.1.4. See also Tos. Mid. 5.3 (648); Nid. 33a; Yoma 19b.

39b. See Exc. XIX.

40. Pes. 66a: מִצְדָּצָה הַנְּשִׁיבָהָן בְּרָאשׁ וּמִינְוָן נְשָׂא וּלְגַם Cf. S. Kaatz, "Hillel und die Bene Bathra," *Jeschurun* IX (1922) pp. 247 ff.

41. See Exc. XX.

41a. Abarbanel in his commentary to Deuteronomy, Shofetim, suggests that the king had the right to appoint members to the Sanhedrin. This is similar to Philo's implication (*De Spec. Leg.* IX, 170) that the king or head of the state appointed judges. This, however, is only an assertion based on biblical records and a result of the ancient historical practice of David and Jehoshaphat. Cf. Belkin, p. 85; W-P, II, p. 346. See also above note 8.

It is probable that during the period of the first Zugot the ruler of the state appointed the Nasi. Simon Hasmonean may have appointed the first judges and Alexander Jannai may have appointed Simon ben Shattah. However, later, the Nasi was chosen by the members themselves as in the story of the Bene Bathra or in the story of Judah ben Tabbi submitting to Simon ben Shattah.

41b. See above, Chap. I, notes 63a, 63b.

42. Yoma 1.3.5. Cf. Moore, III, p. 16. Perhaps "Abba" may have been used as a title before 70 C.E. See Peah 2.6. See analysis of *zekenim* and *presbyteroi* in Allon₄, p. 110, n. 96..

42a. Sanh. 11.3.

42b. See above, Chap. III; SZ₆, p. 9.

42c. See Exc. XVI.

42d. Abot 1: רָבָן גַּמְלִיאֵל הַזָּקָן, רָבָן שְׁמֻעוֹן בֶּן גַּמְלִיאֵל (427): כַּשְׁהִיא רָבָן גַּמְלִיאֵל בִּבְנָה: Cf. Allon₄, p. 142, who quotes Sherira Gaon, *Iggeret*, p. 125.

43. Ket. 13.1: זְנִי זְנִי גּוֹרוֹת הֵינוּ בְּירוּשָׁלָם. See Geiger (H), p. 79-81; Laut.₁, p. 186, note 1; Laut.₄, p. 35.

44. *Dor Dor v'Dorshav* I.

45. *Moreh Nebuche ha-zeman*, p. 13.

46. *Yesode mishpat ha-ibri*. IV, p. 12 ff. Ket. 13.1: חָנָן אָוּמָר... נַחֲלָקוּ עַלְיוֹן בְּנֵי כִּיגָּר...

47. Ket. 105a: אָמָר רַבִּי יְהוָה אָמָר חָנָן.

47a. Sanh. 1.1: זְנִי מְמֻנוֹת בְּשִׁלְשָׁה גּוֹלוֹת וּחֲכָלוֹת בְּשִׁלְשָׁה.

כל סנהוריין שיש בה שנים יודעים לדבר וכולן: (427) 48. Tos. Sanh. 8.1 כל סנהוריין לשמע רואיה לעשות סנהוריין.

49. Rashi, Sanh. 17b: **שׁוֹנִים יְדֻעִים לְדָבָר...** בשביעים לשון Cf. IH₁, p. 396.

50. See above notes, 44, 45, 46. Cf. vs. I. Herzog's opinion, S. Kook, *Sinai* III b (1939), p. 94: **שׁוֹנִים אֶחָד לְדָבָר וְאֶחָד לְשָׁמוֹעַ**,

Cf. Yer. Shek. 48d; Hor. 1.4 שֶׁל בֵּין שְׁמָם. See Maimonides, *Tad*, Hilket Sanhedrin, 1.5 and Meiri on Sanh. 17b.

51. Cf. NHWB; Jastrow, *Dictionary*; see also P.R. Weis, *Mishnah Horayoth*, Manchester, 1952, p. 20. J. Rabinowitz, מופלא—*L'shonenu*, Jerusalem, Sivan 5712, Vol. 18, I, p. 25, following the Tosefta MSS reading of מופלא suggests that the Mufla was the *nomophylakes*, recognized in Greek law as a title of officials appointed to watch over the laws and their observance. Therefore the Mufla cannot be identified with either the Nasi or the Ab Bet Din. He watched over the laws locally, and if any problem arose went to the Lishkat ha-Gazit. The Greek original may have been forgotten and hence its interpretation was attached to a biblical verse.

52. Schürer, GJV, III, note 506; LG₁, III, p. 213-7. Comp. Tosafot Sanh. 87a, s.v. במופלא שבב' מומחה למצוות חלמי'.

53. Tos. Sanh. 7 (425); Tos. Hag. 2.9 (235). Cf. Cantic. Rab. to III, 7; Num. Rab. Sec. III; Gen. Rab. 70.8 (ed. Theodor, p. 807); S. Lieberman, *Deut. Rabbah* 41.8; Yer. Hor. 46a. See Newman, p. 117. Cf. Barons, Vol. II, p. 419 n. 44.

54. SZ₁₈, p. 300.

55. כ' יפלא לנור. See Exc. XXIV.

56. Sanh. 87a: כ' יפלא מפרק דבר במופלא שבב' הכתוב מדבר:

57. Deut. 17.8 ff. כ' יפלא מפרק דבר למשפט.

CHAPTER VIII: THE NUMBER

1. Sanh. 1.6: **אֵין דָנֵין לְאַת** ibid., 1.5: סנהורי גדולה הייתה של שבעים ואחד: השבת ולא את נביא השקר ולא את כ"ג אלא על פ' ב' של ע"א.

Cf. Juster, p. 400; LG₁, III, p. 189-220. See also Allon₄, p. 121.

2. Sanh. 1.5; Shebu. 2.2. The tradition of 71 is corroborated in the principle (Sanh. 1.6), "a court cannot be even-numbered." See below note 30. Cf. Ewald, *Geschichte d. Volkes Israel* (1852) V. p. 189-94; Schreier, p. 407.

3. *Ibid.* רבי יודה אומר שבעים. The number "seventy" is often mentioned in the Bible and may be the basis for later traditions. Cf. Num. 11.16, 24; Judg. 9.2, 5; I Sam. 6, 19; II Kings 10, 7; Ez. 8, 11. See H. M. Orlinsky, "The Septuagint," *Bib. Arch.* (May, 1946).

4. The rivalry of these numbers is frequent in Jewish literature. See the Index to LG, *Legends of the Jews* for references to traditional Sanhedrins of 70, 71, 72 in the haggadic sources of different periods. See Exc. XXV.

5. Rabbi Judah who gives the tradition of 70 is called ראש המדררים בכ"פ (Ber. 63b, Shab. 33b). He is regarded as the first authority in historical

traditions. See below, note 36. His records of the Onias Temple (*Men.* 109b), the Septuagint (*Meg.* 9a) and the Alexandrian Synagogue (*Suk.* 51b) are corroborated from non-rabbinic sources. Cf. Bacher₂, p. 134, note 22.

6. Cf. LG's note in Moore, III, p. 32.
7. The number 71 is recorded by Rabbi Jose ben Halafta in *Sanh.* 88b and *Tos. Hag.* 2.9 (235): *לא היה מחלוקת בישראל בבב"ד של ע"א בלשכת המתין*. Concerning Rabbi Jose's historic records, see SBH₂, p. 169.
8. Cf. I. H. Weiss, II, p. 163; Bacher₂, II, p. 15.
9. Comp. Schreier, p. 406.
10. *Shab.* 15a. Cf. B-HDB, IV, p. 391 and Frankel₁, p. 60. Cf. I. Goldberger, "Ha-mekorot bidvar aliyat Hillel la-nesi'ut," *Hazofeh* (Budapest, 1926), X, p. 69. There is no evidence that the Bet Shammai opposed the *nesi'ut* of Rabban Gamaliel or that they refused to pick an Ab Bet Din.
11. See *Exc.* XXII, XXVI. Only in a trial court of 23 was an odd number necessary, not in a court of interpretation. See below, note 30.
12. See below, Chap. XII.
- 12a. Stein, *Zion*, (Jan., 1938), II, p. 118, believes that Rabban Johanan ben Zakkai asked for Jabneh because it was the private property of Vespasian and because the city already had the tradition of an independent Sanhedrin. The sources are *Git.* 56b and *M. Sanh.* 11.4. See also Klein, p. 97. Allon₂, p. 183-212, contends that Jabneh was an internment camp; only later was the Sanhedrin organized since *Tos. Sanh.* 11.7 (432) does not mention Jabneh. See also Allon₄, p. 59.
13. LG, "Bet Din," JE, III, p. 114, declares that before the destruction of the Temple, "it is highly improbable that there was a Bet Din of this class in Jerusalem." This is to be compared with the view expressed by him in Moore, III, p. 32. See above Chap. I, note 57. The sources which speak of the school of Rabban Gamaliel at Jabneh use the term *Methivta* (Babli) and *Yeshiva* (Jerushalmi). See *Exc.* XXVI.
14. On Rabban Johanan ben Zakkai, see Hyman, s.v. יוחנן בן זקאי. Allon₂, p. 183 ff., Kaminka₂, p. 70 ff.. Greenwald, p. 64, note 97 and LF₁, p. 38.
- 14a. See *Life* 38, 39; *Git.* 56b. Cf. Allon₄, p. 63.
- 14b. For the priestly origin of Rabban Johanan ben Zakkai, see Rashi, *Shab.* 34a, *Tosafot Men.* 21b; Büchler, *The Economic Condition of Judea after the Destruction of the Second Temple* (London, 1912), p. 12. Allon₄, p. 56, disputes that.
15. See Allon₁, p. 183; Allon₂, p. 154; SZ₉, p. 8. Cf. A. Burstein, "Bakashat Rabban Johanan ben Zakkai m'Aspasyanis," *Bitzaron*, XXIV, 5 (April 1951) p. 34 ff.

15a. Specifically the title "Nasi" is not found appended to Rabban Gamaliel's name, unless we accept that the source in Sanh. 11a refers to Rabban Gamaliel II. See below, notes 16b, 16c.

16. Cf. Tos. Ber. 2.6 (4); Ber. 27b; Yer. Sanh. 25d; See SZ₉, p. 8.

16a. After the destruction of the Temple the Nasi was regarded as the representative of the nation, but the Roman authorities had no contact with the Great Sanhedrin.

16b. Sanh. 11a: אין מעברין את השנה אלא אם ירצה הנשיא ומעשה בר' ר' ג' שהלך ליטול רשות אצל שלטון או שבסוריה.

16c. *Ibid.* See above, note 15a and comp. below, Chap X, note 86, indicating that Sanh. 11a refers to Rabban Gamaliel I.

16d. The term (R.H. 2.9) does not prove his authority; it may only be a reference to his period, as in R.H. 25a: ב"ג שעמד משה עז עכשוי.

17. See *Exc. XXIII.*

17a R.H. 2.8; Ber. 28a; Bek. 36a; Yer. Ber. 7d; Yer. Ta'an 67d.

18. See LF₂, p. 123 for the entire story of Rabban Gamaliel's ousting, as generally interpreted. We cannot agree with LF that "They not only ousted him from the Sanhedrin but expelled him from the Pharisean order." After the destruction of the Temple, there was no semblance of a Pharasaic order (in contradiction to a Sadducean).

19. See *Exc. XXVI.*

19a. Ber. 7d: הלכו ומינו את רabi' יושביה.

19b. Ber. 28a: ואף ר' ג' לא מגע עצמו מבית הדורש אף שעלה אחרת.

20. LF₂, p. 128. See *Exc. XXV.* Cf. Allon₄, p. 195.

21. Ber. 7d: אע"פ כן לא הורציו אותו מadolתו אלא מינו אותו רabi' יושביה.

21a. Ber. 28a: לדורש ר' ג' תלתא שבתא ורabi' יושביה שבתא והיינו אמר מר שבת של מי הייתה של רabi' יושביה היה.

21b. See *Exc. XXVI.*

22. Sanh. 11b. See also the letter in Yer. Ma'as Sh. 56c where the elders (R. Joshua) participated: שהיה רבי יהושע בן חנניה חמן והזקנים (R. Joshua) participated: Note also the letter of Rabban Gamaliel and friends in Tos. Sanh. 2.6 (416). Comp. these with the letter of Simon ben Shattah (Ta'an. 23a). Cf. Klein, p. 211. See also Allon₄, p. 196.

23. Men. 104a: מרידינו דבי נשייה.

24. *Ibid.* Though R. Meir is not mentioned by name, it is known that an anonymous opinion is presumably his. Cf. Sanh. 86a.

25. The general view that the Nasi was chosen by the members sitting together סגדארין גדולה היהת של (בהתויה) is explained in Sanh. 17a: ע"א וכחיב אספה לי שבעים איש מוקני ישראל ומשה על גביהם אמר קרא והתיצבו עמן עמן ואת בתויהו.

26. Rabbi Judah on the other hand is presumed to maintain that the Nasi was exceptional עמך משומש שכינוה. ורבי יהודה. See next note. Rabbi Judah's view may also be based upon the literal interpretation of אספה לי

ארבעים יכו literally and exactly. Cf. Mak. 3.10.

רבי יהודה אומר מניין שמננים אחד על גבי כולם תיל תחן לך ואומר הנה אמרתו כהן הראש עליים ושורטם הלוים לפניכם.

רבי יהודה אומר : This is derived from II Chron. 19 ; cf. Tos. Sanh. 3 (419) סנהדרין של רביעים ומשה עמן מן המניין .

Rabbi Judah, in the *Sifre*, does not refer to the supremacy of the Great Sanhedrin over the smaller ones, which is self-evident, but rather to the fact that one individual presided. *Tosafot's* view, (*Sanh.* 16b) that it applies to an individual, is thus to be accepted rather than *Rashi's* opinion *ad loc.* Comp. LG₁, p. 216 ; Guttmann, 1, p. 83 ; SZ₁₉, p. 428.

28. See above, note 26. The notion that Moses, the typical leader, balanced the rest of the Court (מֶשֶׁה בַּמְקוֹם עֵד) also denotes the supremacy of the Nasi over the 70. He had, no doubt, the veto power, as in the case of the intercalation of the month. See *Sanh.* 13b, 16b.

29. *Suk.* 52a ; *Sanh.* 1.1 ; *Yer. Shek.* 47d, 51a. See above, notes 3, 5.

30. *Sifre Num.* 11.17: TYT on *Sanh.* 1.6. notes that though R. Judah maintains in *Sot.* 9.1 the opinion of R. Jose's view (*Sanh.* 88b) : אמר רבי יוסי מתחילה לא היו מרביתן מחולקת ב'יד אין ב'יד שקול בישראל אלא ב'יד של ע"א יושבין בלשכת הגזית... משרבו תלמידי הילל ושמאי... Tos. *Hag.* 2.9 (235) : א"ר יוסי בתחילת לא הייתה מחולקת אלא ב'יד של ע"א ה'יה בלשכת הגזית.

31. *Hag.* 2.2.
 31a. *Hag.* 16b: תיר שלשה מזוגות הראשונים שאמרו שלא לסמור ושנים מזוגות الآخرون שאמרו לסמור הראשונים היו נשאים ושנים להם אבותה ב'יד דברי ר' יוסי אמר רבי יוסי מתחילה לא היו מרביתן מחולקת ב'יד אין ב'יד שקול בישראל אלא ב'יד של ע"א יושבין בלשכת הגזית... משרבו תלמידי הילל ושמאי... Tos. *Hag.* 2.9 (235) :

32. Frankel₁, p. 163, believes that because of family prestige Rabban Simon ben Gamaliel was restored to his place as Nasi ; the position of Ab Bet Din was given to R. Nathan because he was the son of the Resh Galuta of Babylon. A new position, that of Hakam, was therefore created for Rabbi Meir. Cf. Rappaport, s.v. חכם; Newman, p. 108 ; Bokser, p. 69.

33. This new policy of "three heads" also fitted in with the tradition of an odd number in a court. Moreover, R. Judah who supported the Nasi retained his previous dignity. See above notes 5, 23 and below, 36.

34. See *Exc.* XXIII.

34a. **ישיבת**

תיר כשלגנשיא נכנס כל העם עומדים ואין יושבין עד שאמר להם שבו. כשהאב'יד נכנס עומדים לו שורה אחת מכאן ושורה אחרת מכאן עד שישב במקומו. כשהחכמים נכנסים אחד עומד ואחד יושב עד שישב במקומו... בימי ר'שבי נשנית משנת זו.

36. The position of Hakam probably was the privilege originally meant

for R. Judah but it was ultimately given to Rabbi Meir; see above, note 32. This may be the tradition in Git. 67a: רבי מאיר חכם ורבי יהודה חכם. **לכישרזה.** See Hyman on Rabbi Meir and Rabbi Judah.

37. Yer. M.K. 81a and Yer. Kil. 32c. Perhaps, R. Meir went to Asia Minor because his wife and daughter had been taken captive there.

37a. Sanh. 11b. Comp. above note 22. See also SZ₉, p. 10-11.

38. Hence, Hor. 13b declares: **בימי רבנן נשנית משנה זו.**

39. Rabbi Judah ha-Nasi may have abolished the minor positions; See Ket. 103a: **שמעוון בני חכם גמליאל בני נשיא.** No Ab Bet Din is mentioned. The Talmud explains: **אע"פ ששמעוון בני חכם גמליאל בני נשיא.** The Hakam perhaps was the Nasi's representative in the court. However, the supreme authority of the patriarch is emphatically stressed by Rabbi Judah in his advice, **נוּהוֹג נשיאתך ברמה.**

40. *Ibid.*, Comp. Bokser, p. 69-70.

40a. Cf. Juster, I, pp. 226, 401-403; II, pp. 95, 151; see above, note 16.

41. According to Frankel₁, p. 171, R. Judah was interested in halakot not pertaining to his own time. (See above, note 5.) He believed that the old Sanhedrin should have been 70 but he knew that it was actually 71. The change from 70 to 71 was due to some peculiar need. It is plausible, however, that the reverse happened. The Sanhedrin consisted first of 71 and then of 70, because no Ab Bet Din remained in office after Hillel's presidency.

42. To recognize that there is no relationship between *Ant.* 14.9.4 and 15.1.2, one must re-read *Ant.* 15.1.1 which is a repetition of 14.9.4. However, *Ant.* 15.1.2 has an entirely different story from that recorded in the previous section. See discussion by Funk, *MGWJ* (1911), p. 33.

43. B.B. 3b.

44. Cf. Wellhausen, p. 105, who takes the term *pantas* literally. Comp. contrary opinion in Schürer, *GJV*, II, p. 109.

45. *War* 2.20.5; *Life* 14; See Schürer's comment on Kuenen's view, *HJP*, II, I, p. 175, n. 476.

46. *War* 4.5.4.

46a. See below, Chap. XII.

47. *Life* 14.

48. *War* 2.20.5.

49. Josephus, *ibid.*, displays his antagonism to the Zealots: "They were called together for a show, as if they were real judges while they had no authority. Now the 70 judges brought in their verdict that Zecharias ben Baruch was not guilty."

50. Other instances of 70 in Josephus are in *War* 2.18.6 and *Life* II. The use of the number "70" in these cases: (a) 70 men of Batanea or (b) 70 principal men coming to Caesarea, however, may be round numbers and does not pertain to judicial bodies as in the cases discussed above.

50a. On the Jewish community in Alexandria, see Belkin, p. 7; Schürer, *HJP*, II, II, p. 226.

שביעים ואחד קתדראות היו בה של זהב כנגד שבעים: (198) 51. Tos. Suk. 4.6 ואותם זבבים.

רבי יהודה אומר... והיו בה ע"א קתדראות של זהב כנגד ע"א של פנתרי גונולגה (ברשות רבנן: ע"א וסימן ו-פנתרי גונולגה נחוצה)

תני איד' יודה שבעים קתריאות של זוג היי שם מקובעת אבנים 53. Suk. 55a: טובות ומרגילותן נגיד שבעים וכינים

See W. Bacher, "Le Siege de Moise," *REJ*, XXXIV, p. 299, note 2; H. Loewe, "Pharisaism," *Judaism and Christianity* (ed. by W.O.E. Oesterley), London, 1937, Vol. I, p. 143.

54. The discrepancy between R. Judah's declaration of 70 and his view of 71 seats in the Alexandrian basilica is apparent. E-TM on Num.

view of 70 seats in the Tabernacle based on a different reading of Num. 11, 16, accepts the reading of the Yerushalmi. Tosafot also saw the difficulty in Suk. 51b (s.v. **בָּהּ**) and in Sanh. 16b. (s.v. **אֶחָד מִמְנוֹנָה**). They concluded that the extra seat was for the *Mufia* who was not included in the number. Thus, it totalled 71. See similar explanation of entire problem by Malbim, on Deut. 16, 18.

55. In *Flaccum* 74; *Ant.* 18.10.1. Cf. Goodenough¹, p. 162; Belkin, p. 7; Churgin², p. 270. See also Allon⁴, p. 206.

56. Luke 10.1 describes the mission of the 70. The number may have been a biblical adoption. It does not include Jesus as the master who sent out the Apostles. The actual total in the Apostolic Synod was therefore 71 in accordance with the traditional practice of this period. On the other hand, if we think of this passage as describing a body that the writer of the Gospel saw in his own day, i.e., before the destruction of the Temple, when the Jewish Sanhedrin consisted of only 70, then the Synod may have been a copy of the Sanhedrin of the Hillelite dynasty. About the mission of the 70, see *Dictionary of the Apostolic Church*, s.v. "Seventy."

57. The roundness of the number 70 and its use in many other sources must be recognized. Cf. SBH₂, p. 169. See Baron₁, 1, p. 44; Orlinsky, "The Septuagint," *BA*, May 1946.

58. Hence the discussion in the Mishnah Sanhedrin and the Gemara. See above notes 26, 27, 28, 29.

59. *Urschrift*, p. 114; *Essai*, p. 91. Schreier thinks that Derenbourg's explanation of the number is forced and that the Sanhedrin consisted only of priests and was arranged according to the 24 Mishmorot (priestly classes). This view is difficult to accept because it would apply only to the Bet Din of priests.

55. **גִּבְעָנִים שָׁנִים אֵלֶיךָ שָׁבָתִים** וְאַתָּה בְּמִזְבֵּחַ.

60a. See Tos. Hag. 2.9 (235). Cf. above Chap. VII. notes 12, 13.

⁶¹ Tos. Sanh. 7.1 (425) : Tos. Hag. 2.9 (235).

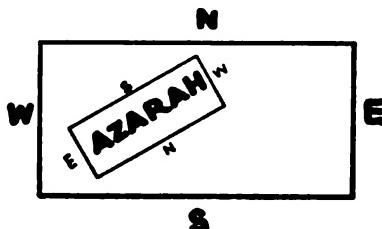
וואהד אין פוחתין מכין. Cf. Halevy, Ic p. 321 and Funk, *MGWJ* (1913). See also RM, p. 41. Comp. *Tad*, Sanhedrin III. 2.

62. Cf. K-DAC, II, p. 456. After the destruction of the Temple, with the elimination of the three Sanhedrins of Jerusalem, the actual division was also dissolved. The Bet Din of Jabneh was established as a body with the single composition of 71. Comp., however, view of R. Samuel Strasoon (רש"ש) on Sanhedrin 16b:

היה הנשיא לבוד הע"א ותחתי משה עשו לדורות שנין נשיא ואביד. השני היה יושב עמהם לכל דבר הנזכר להעשות ע"פ סנהדרין הגדולה כי הוא היה למנין הע"א והראשון (הנשיא) היה רק לעניינים מיוחדים.

CHAPTER IX: THE MEETING PLACE

1. Sanh. 11.a: ב"ד הגדול שלשכת הגוית. Comp. the reading שבדרום לשכת הגולא by the commentators who follow Yoma 19a. This reading is impossible because the chamber of the high priest, near the water gate, was on the south side of the Temple Court, since it is identical with Lishkat ha-Etz, according to Abba Saul. Cf. Tos. Yoma 1. 20 (182); Sifre, Ahare Mot. Chap. 6, 8; Mid. 1.4; 2.6.
2. *Ibid.* לשכת הגולא לשכת הגוית שבדרום לשכת הגולא. Comp. the reading שבדרום לשכת הגולא by the commentators who follow Yoma 19a. This reading is impossible because the chamber of the high priest, near the water gate, was on the south side of the Temple Court, since it is identical with Lishkat ha-Etz, according to Abba Saul. Cf. Tos. Yoma 1. 20 (182); Sifre, Ahare Mot. Chap. 6, 8; Mid. 1.4; 2.6.
3. *War* 5.4.2 (144). See note, *ibid.*, J-LCL, III, p. 243.
4. *GJV*, II, p. 264.
5. Tamid 2, end: הציתו שתי המערכות באש וירדו ובאו להם לשכת הגוית... אמרו להם הממונה בוואו והפסיקו אמרו להם לשכת הגוית לקרו את שמע וכו'... אמר וירדו ובאו להם לשכת הגוית לקרו את שמע וכו'... אמרו להם חדים לקרות בוואו והפסיקו... See also Yoma 69b.
6. *GJV*, II, p. 253; p. 264, n. 89.
7. *Das Synedrion*, pp. 18, 32.
8. Tamid 4, end: יירדו ובאו להם לשכת הגוית לקרו את שמע וכו'... אמרו להם חדים לקרות בוואו והפסיקו... See also Yoma 69b.
9. J.E., s.v. "Temple of Herod," XII, pp. 86; s.v. "Xystus," *ibid.*, p. 575.
10. Yoma 1.1.
- 10a. See *Exc.* XXVIII.
11. Sanh. 11.2.
- 11a. Cf. above, Chap. II.
12. See above, Chap. IV and *Exc.* XIII.
13. Hollis, *Archaeology of Herod's Temple*, p. 130.
14. The directions of the Azarah in the Mishnah are shown in the diagram below. This is also Josephus' method when he speaks of the inner court (comp. *War* 5.5.2 with the Mishnah.).



Yet, Josephus uses compasslike directions when he describes the Temple Mount as a whole and designates the outer wall (*War* 5.1.5). Therefore, the southeastern corner of the (inner) Azarah was very close to the (outer) western cloister of the Temple Mount. (Comp. *Ant.* 20.1.11; 15.11.15). When he asserts (*War* 5.5.2) that the western part of the court had no gate at all, Josephus refers to the unbroken western wall of the (inner) Azarah, i.e., the wall behind the Holy of Holies, Mid. 1.4. Hence, Büchler, p. 18, is incorrect in assuming that this refers to an unbroken western wall near the Gazit Chamber. The Holy of Holies was on the west side of the Azarah; the Gazit chamber on the southeast. Comp. Büchler, p. 21.

15. *Ant.* 15.11.3; Hollis, p. 74.

15a. From this open terrace Titus conducted his negotiations with the Jews before he attacked the city. *War* 6.6.2.
הר הבית... רובו מן הדרום שני לו מן המזרח שלישי לו מן הצפון:

15b. Mid. 2.1: מיעוטו מן המערב.

16. Mid. 1.3. The Mishnah points out that there were two gates on the south side of the Temple Mount, whereas there was only one for each of the other sides.

17. Hollis, p. 78.

17a. Mid. 5.4: שבורות לשכנת הגאות.

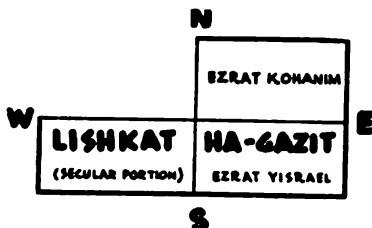
18. Ma'as. Sh. 3.8: בינויות בקדוש ובחול.

19. Yoma 25a. Büchler, pp. 21, 32, places the Gazit Chamber in the inner court on the south side, half between the *Ezrat Yisrael* and half within the *Ezrat Kohanim*.



His conjecture (when linked with Abaye's statement that, in the casting of the lots, "The elder (*zaken*) was in the west and the lots (*pi'us*) in the east" would mean that the priests would be in *Ezrat Yisrael* and the elder who is recognised as a layman would be in the *Ezrat Kohanim*. This cannot be accepted. It is believed here the Gazit Chamber was in

Ezrat Yisrael and extended outside into secular territory. The priests cast their lots in the sacred portion, i.e., the *Ezrat Yisrael* whereas the elders sat in the non-sacred territory outside. The directions "east" and "west" used by Abaye are compass-like and do not correspond to the Mishnah's direction of the Azarah.



לשכת הגויה כמין בסיליקי גוללה הייתה פיס במורחה וזקן יושב במערבה.

Cf. H. L. Gordon, "Basilica and Stoa in Early Rabbinical Literature," *Art Bulletin*, XIII (No. 3), p. 9. From the basilica form of the Chamber and the way the judges sat [like half a round granary (Sanh. 1.3)], it may be assumed that there were apses at both ends pointing to an original semi-circular shaped building. B-HDB, believes that the basilica view of the Temple is derived from a description of the basilica of Alexandria. Cf. Yoma 25a; Tos. Suk. 4.6.

21. Cf. Peah. 2.6.

22. Yoma 25a; comp. Maimonides, Yad. *Hilkot Bet ha-behira*, Ch. 5.

וראשי ספסין מבדיין בין קוש לחול

23a. Yoma 1.1; Yoma 8b.

שבדרום לשכת הצע לשכת הגולה לשכת הגויה לשכת הצע אמר רabiyi שכחתי מה הייתה משמשת. אבא שאול אומר לשכת כי"ג והיא היה אחורי שתיהן וגג שלשון שות.

25. See note 56, below.

26. Mid. 1.4: דלק, בכורות מים.

27. Mid. 1.1; Yer. Yoma 39a; Tamid 1.1: אבטינס וטבילה לכ"ג.

28. Yoma 19a: וועל גגה היה בית טבילה לכ"ג.

חו"ז מזו שהיה בחול. 29. Yoma 3.3. Tos. Yoma 1.20 (182), Sifre 82c: על גבי שער המים ובצד לשכת היה.

30. Yoma 1.1-4: מפרישין כי"ג מביתו לשכת פרהדרין... והעליהם לעליית בית: אבטינס.

אמר רב פפא שני שתי לשכות היו לו לכ"ג אחת לשכת פרהדרין... ואחת לשכת בית אבטינס.

31a. See *Exc. XXVIII*.

32. Mid. 4.4. The incense was customarily prepared in Bet Abtinas. Cf. Yer. Yoma 39a; Yoma 19a; comp. ROB on Mid. 5.4 and Yoma 1.5.

32a. Yoma 1.3.

33. There was probably a door connecting the Gazit and Parhedrin. Comp. TI on Mid. 5.4.

34. Yoma 1.5: מטרתו זקני ב"ד לזרני כהונה והעלתו לעליית בית אבשינס.
35. Jastrow, *Dict.* s.v. אָבְשִׁינָס.
36. Tos. Yoma 1.20 (182). See *Tosafot Yoma* 8b. Comp. TYT and the commentaries TI and on Mid. 5.4.
37. See *Exc. XXVIII*
38. *Ibid.*
39. Yoma 8b; Tos. Yoma 1.1 (180); Yer. Yoma 38c; Levy, NHWB I, p. 199; IV, p. 103; Büchler, p. 25; Schürer, II, p. 264. ואמ' בצפונן מקום שיטול: העץ עיטה תמן משתלה למהורי.
- 39a. Targum Koh. XI, 3, renders for שיטול: העץ עיטה שם יהא אם בצדונו אחר דאתגור למתקיימא היא עיטה תמן משתלה למהורי.
40. Yoma 10a: כל הלשכות שהיו במקדש לא היו להן מועזה חוץ מלשכת פרהדריה שהייתה בה בית דירה לכ"ג אמר ר' יודה... לשכת פרהדרין גיירה הייתה שם חזיה בקדוש וחזיה בחול וש"ט.
- 40a. Mid. 5.3. See also Yoma 25a: שני פתחים היו לה או"ר פתח בקדוש ואחד פתח בחול.
41. See other reasons given by commentators on Mid. 5.3; also *Exc. XVIII*.
42. Mid. 5.4; Tamid 4 end: וירדו ובואו לשלכת הגmittel לקרוות את שמע. Cf. the opinion of Lieberman₂, p. 172, that preliminary examinations were in the back chamber (אחרי בית הפרוכת) (*opisthodomos*) but the final meeting was in the Gazit Chamber.
- 42a. In speaking of *Lishkat Parwa* on the north, Mid. 5.3 also states: על גגה היה בית טבילה לכ"ג ביה"כ. How is this to be reconciled with the Golah on the south? The commentators explain that the immersion of the high priest in the Golah Chamber over the Water Gate refers to his first immersion (Yoma 3.3). The priest's later immersions were away from the public and, therefore, in *Lishkat Parwa*, in the north. Hence, there is no contradiction. See ROB, *ad loc.* Cf. Allons, p. 21.
43. Suk. 4.9. See below, note 52.
44. Ex. 20.25; I Kings 5.31; 6.36; *ibid.*, 7, 9, 11; Ez. 41, 42; Amos 5.11 (Xystus); I Chron. 22.2; Isa. 9.9 (hewn stone); Lam. 3.7.
45. *Dict. of Antiquities*, p. 580 b.
46. Xystus was a place for wrestling and gymnastics; *idem.*, p. 1020.
47. It is interesting that the colonnade on the south side of Greek buildings seems to conform to the location of the Xystus of the Temple Mount. See Klein, p. 108.
48. Ex. 20.25.
49. I Kings 5.31.
50. Chambers for oil, sheep, etc., were also found on the north side of the inner court where the area was smaller and less people entered (Tamid 3.3). See next note.
51. Mid. 1.3: שני שערין חולדה מן הדורות ממשמץ כביסה ויצאה. Mid. 2.2: כל הנכנסין להר הבית נכנסין דרך ימין.
- ולמה נקרא שמו שער המים שבו מכניסין צלחת של מים של: ניטוך בחג.

52a. See the description of Simon the Just, in Sirah 50.5.

53. Mid. 1.4: שער המים .. שבדורופ ..

54. The Chamber for the priest who burned the red heifer was on the north. See Par. 3.1: שבת ימים קודם לשפטת הפרה מפרישין כהן השורף .. את הפרה מביתו ללשכה של פני הכירה צפונה מזרחה.

This ceremony was truly a non-public affair; there would be no disturbance from the laity in the north, because on this side there were the fewest entrances.

55. Mid 2.5 צורחית צפונית היא הייתה לשכת העזים.

See *Exc. XXVIII* and Klein, pp. 127-128.

56. See previous note. Comp. TYT on Mid. 5.4. He also quotes R. Joseph Karo: ולכן ניל דלא של עץ הייתה ומיש עץ הרם ויל שלשכת כיינ לא של עץ הייתה אלא בונין אבנים וגיא.

57. See *Exc. XXVII*.

58. The Rabbis, wishing to subordinate the priests, further decreed the secularization of that portion of the Chamber (Yoma 10a, Tos. Yoma 1.2). See above note 40.

58a. See SZ₁, p. 81 ff.

59. *War* 6.6.3: "On the next day, [the soldiers of Titus] set fire to the repository of the archives, to Acra, to the *bouleuterion* and to the place called *Ophlos*." Also *War* 5.4.2.

60. Cf. Schürer, *GJV*, II, p. 452; Büchler, p. 17.

61. *War* 6.6.2: "Titus placed himself on the western side of the outer court of the Temple for there were gates on that side above the Xystus and a bridge that connected the upper city to the Temple." *War* 6.3.2: The Jews as a strategy burnt down the western cloister of the Temple as far as John's Tower which he built."

62. *Ibid.*, 6.6.3.

63. Cf. Büchler, p. 432.

64. *War* 6.5.2 ; 6.6.1.

65. *Ibid.*, 6.6.2.

66. *Ibid.*, 6.6.3.

67. See *Exc. XII, XXVIII*.

68. The *logisterion* or Chamber of Accounts (Bureau of Taxation) had its quarters here. Cf. S. Gandz, "The Hall of Reckonings in Jerusalem," *JQR*, XXXI (April, 1941), p. 385. See also Barons, Vol. 1, p. 393 n. 6.

CHAPTER X: THE FUNCTIONS OF THE BET DIN HA-GADOL

1. According to Schürer, *HJP*, II, 1, p. 186, only the following functions were actual: judging cases of blasphemy and a false prophet, as in the instances of Jesus, Stephen, Peter and John. Paul, too, transgressed the Mosaic Law and appealed before the Sanhedrin. However, these special cases are incorrect examples. They were conducted by grand juries or "state synedria" and did not appertain to the Great Sanhedrin. See

SZ₁. CT-H, IV, p. 243, regards all notices of the functions of the Sanhedrin as factual. Cf. Greenwald, p. 15-18. See also Allon₄, p. 121 ff.

1a. Cf. Juster; Moore II, p. 183; SZ₈, p. 38.

2. *De Spec. Leg.*, III, 10.

3. Cf. Gulak, p. 18; see also Bokser, p. 143.

3a. Cf. Abr. Weiss, in LGJV.

3b. Cf. Bloch; SZ₆, p. 21 ff; Frankel₁, p. 96, n. 9; SZ₂₃, p. 361; Bokser, p. 10 ff.

4. *Ant.* 13.10.5; 18.1.4: "The Pharisees had religious power even over the king and high priests." Cf. Bokser, p. 145.

4a. The omission of the high priest in Philo's discussion of the *Sotah*, (*De Spec. Leg.*, III, 53) and the distinct mention of the Jewish court in Jerusalem may thus be understood. Cf. Belkin, p. 86.

4b. Rabbinic sources and Josephus agree in this. See *Exc. XXII*.

5. *De jure*: 11 toparchies of Judea were subject to the Sanhedrin; *de facto*: all Jews over the world accepted its rule. Cf. Acts 9.2; 22.5; 26.12. See Juster, II p. 127 ff.

5a. Cf. SZ₈, p. 38; SZ₉, p. 5; Greenwald, p. 19. Cf. SZ₂₅, p. 374.

6. Sanh. 6.4 וְהָלָא שָׁמַעַן בֶּן שְׂטָחׇ חֵלָה נְשִׁים בְּאַשְׁקָלוֹן;

Cf. Büchler, p. 189, n. 170.

6a. Schürer, *GJV*, I, 285, n. 31; p. 289, n. 17; II, p. 121, doubts the traditions about Simon ben Shattah. See *Exc. XIX*.

7. I Macc. 10.86; 11.60; 12.33.

7a. *Ant.* 13.5.5.

7b. Tos. Shebi. 4.11 (66) : תְּחוּם אֲיִי פְּרַשְׁתָּאַשְׁקָלוֹן : עִירוֹת הַמִּכְלָוֹת בְּאֲיִי כָּנוֹן... אַשְׁקָלוֹן וְחַבּוּרָה.

Taubes, p. 37, disagreeing with Schürer, believes that at times Askalon belonged to the Jews.

7c. Comp. Tos. Sanh. 10.10 (431) : וְאִם הִיְתָה עִיר שֶׁל גּוּיִם סֻקְלִין אָוֹתָה : בְּלִי שָׁחוֹת בֵּית יְהּוָה.

8. II, p. 277; II, p. 67.

9. Comp. Mak. 7a: סְנַהְדְּרִין נָוְהָגָת בֵּין בָּאָרֶץ וּבֵין בָּחָלֵל.

10. Cf. Juster, II, p. 131.

10a. Comp. *Ant.* 16.6.2.

11. Mommsen, V, p. 418.

12. See SBH₂, p. 169 and also below, Chap. XII. See *Exc. XXIX*.

13. *Ant.* 15.11.5.

13a. *War* 6.2.4.

14. Cf. Juster, II, p. 94.

15. The Romans never changed Jewish customs. See *Legatio ad Gaium*, p. 38; *War* 2.11.6; cf. Mommsen, II, chap. II. Juster, II, p. 147 shows that in fact all the cases dealt with by the procurators were instances of sedition or of banditry. See his list in note, *ibid.*

16. Cf. e.g., Tos. Yoma 2.6 (184) : שְׁלֹחוּ חֲכָמִים הַבְּיאוּ אָוְמָנִים מַלְכָסְנָדְרִיהָ :

17. See above, Chap. II, note 14, 17; also Chap. V. Sec. "Historicity of the Zugot" and Chap. VI.

Note also the work of the Great Assemblies of the different periods. Cf. SZ₂, p. 36. See *Exc. XIV*.

17a. R. H. 23b; Er. 4.1. Cf. SZ₂₈, p. 360. See Albeck, p. 78.

18. Sot. 9.10: יוחנן כ"ג העביר הווריות מעשר.

18a. See SZ₆, p. 8 and Bloch.

18b. E.g., Git. 4.2: ר' הל החקון, ר' ג' התקין Tos. Ber. 2.6 (4): ר' בון גמליאל ובית דינן.

18c. Ab. Zar. 2.6: הוושיב ב'יד על כך.

18d. CT-H, I, p. 179, note 2.

18e. Halevy, II, chap. 10, p. 46.

18f. In a review of CT, *Hatekufah*, XXIX, p. 368.

18g. SZ₉, p. 11-12.

18h. See above, Chap. I, note 63b.

18i. Comp. above Chap. VIII, note 16d.

19. Concerning the book in the Azarah, see *Sifre Deut.* 35.6; Yer. Ta'an. 68a: ספר פורה... ובטלו חכמים את אחד וקיימו השנים. Cf. *JQR* (July, 1950), XLI, p. 21. See Albeck, p. 508. ומגיהין אותו ב'ידי של כהנים וגוי.

19a. Yer. Sanh. 20c; Tos. Sanh. 4.7 (421): Cf. M. H. Segal, "The Promulgation of the Authoritative Text of the Hebrew Bible," *JBL*, March 1953, p. 43.

19b. Comp. Lieberman₂, p. 21-22; Newman, p. 76.

20. A verdict of innocence was never reversed. Only conviction could be reversed and hence the defendant appealed. See Tos. Sanh. 9.1 (428): ואף הוא אומר יש לי ללמד על עצמי וכוח מחזירין אותו אף ד' זה פעמים.

21. Peah 2.6: ועלו לשכת הגזית.

22. Sanh. 11.2: אם שמעו אמרים להם ואם לאו ואלו באים לב'יד המזרל: שכלהמת הגזיות.

The statement in Eduy. 1.5, אין ב'יד יכול לבטל דברי ב'יד חברו, belongs to the later academies, after Jabneh. Comp. views of Tosafot, Git. 36b s.v. *The Mishnah Sanhedrin* text, however, refers to the period before the destruction of the Temple. Since lower courts are mentioned, the historicity of the early practice is corroborated for there was no system of appeal after 70 C.E. See also Luzzatto, II, p. 174. Comp. notion of RM, p. 41.

23. Deut. 17.10.

24. See *Exc. XIII*.

24a. See TYT, *ad loc*: ועלו שניהם.

25. Peah 2.6. This incident supports Sanh. 11.2 which deals with the search for tradition: כד דרשתי וכך דרשנו חבירי כך למדתי וכך לימדו חבירי אם שמעו אמרים להם.

26. Eduy. 7.4: ובא מעשה לפני לשכת הגזית.

27. Very few actual cases are recorded in the Talmud: (1) the case of riding a horse on the Sabbath (*Sanh.* 46a); (2) Simon ben Shattah's judgment of witches (*Sanh.* 6.4); [The appended story of Simon ben Shattah's refusal to recall an accusation against his own son is in *Yer. Sanh.* 23b and mentioned also in *Rashi, Sanh.* 44b] (3) a case of false witness (*Mak.* 5b); (4) Rabbi Eliezer ben Zadok's story of an adulterous daughter of a priest (*Sanh.* 37); and (5) Rabban Johanan ben Zakkai's investigation of a capital crime (*Sanh.* 41b). All of these cases seem to be unusual and not in accordance with the authentic Halakah accepted later by the Tannaim; hence they are recorded and disputed.

28. *Eduy.* 1.5. See note 22 above. There are many instances in the Mishnah of Rabban Johanan ben Zakkai amending the law. See e.g., R.H. 4.2.3: *בראשונה היה... התקין ריבוי*.

28a. *Sh. e. g., Git.* 5.6; see Frankel, pp. 150, 221 for list.

29. *Kid.* 43a; *SZ*₇, p. 511.

30. *Shab.* 19a: *וכן שמא אמר עז דדוחה אפי' בשבת*. See below, note 30d. Cf. Bokser, p. 12 ff. See Albeck s, p. 9.

30a. *Ant.* 12.1.1 (4). See *T-Z*, p. 3.

30b. I Macc. 2.35-41; *Ant.* 12.6.2 (277); *Ant.* 13.1.3 (12); I Macc. 9.43. Bacchides attacked Jonathan on the Sabbath; *T-Z*, pp. 25-26, 161.

30c. *War* 1.7.3 (146).

30d. *Ant.* 14.4.3 (63).

30e. *Tos. 'Er.* 4.7 (142) quotes the permission in the name of Hillel: *וכן היה הל הוקן זורש עז דדוחה אפי' בשבת*.

30f. *War* 2.19.2 (517). See J-LCL, Vol. 7, p. 142, note a.

30g. See the full study of this problem in *SZ*₂₅.

31. *Git.* 4.3; *Ar.* 9.4. Such regulations of an economic nature were intertwined with religious motives. Their enforcement, through interpretation, in the Bet Din shows the recognition of the exigencies of life by the court. For literature on Probus, see below, Chap. XI, note 17. Cf. also Bokser, p. 11 ff; Barons, Vol. II, pp. 262, 302.

32. *Git.* 4.2 ff; 6.7: *בראשונה היה עושה בז' מקום אחר ומכללו התקין ר' ג' הוקן שלא ידו עושין כן מפני חיקון הזולם*.

33. *Ker.* 1.7: *ונכנס לבז' למד רשבג*. The statement that Rabbi Simon ben Gamaliel "went into the court and taught" is additional evidence that special decrees or changes in the law could be issued only by the Great Sanhedrin. This was done by re-interpretation of the biblical source.

34. *Shek.* 7.6: *התקינו בז'*. Though the Great Sanhedrin is not specifically mentioned (the expression "Bet Din" is used), it is apparent that the tribunal could not be the Bet Din of priests. Such a body was only concerned with internal questions of the priests and therefore could not regulate any impositions upon the people, such as charges for the congregation. Only the supreme court which regulated all matters of a

religious nature affecting the people could have such authority. These ordinances are similar to Rabban Simon ben Gamaliel's decrees in Ker. 1.7. See above, note 33.

35. Suk. 4.4: וכשרהה ב"ז שבאו לידי סכנה התקינו שיהא כל אחד נוטל בכיתו: Only the Great Sanhedrin could abolish a ceremony performed in the Temple precincts and ordain that it be performed in one's private domain. Herein the exceptional power of repeal held by the Sanhedrin may be realized as well as the subjection of priestly domain to rabbinic authority.

36. See *Exc. XIX*; SZ₆, p. 21, 26.

תניא רabi אומר שמעתי שב"ז עונשין ומcin שלא מן התורה ולא לעבור על דברי תורה אלא כדי לעתות סיג לתורה ומצוות באחו שרכב על גבי סוס בשבת ביום יונם והביאו לו ב"ז וסקלווה לא מפני שרואי لكن אלא Cf. Newman, p. 61.

38. See Meiri's commentary, *ad loc.*

39. Sanh. 3.4: אין ממעידין לא מלך ולא כי אלא בב"ז של ע"א.

Cf. Schreier, p. 406 and Büchler, p. 55, note 51. See *Exc. XXII*. On the question of the selection of a king by lots, prophet, all the people or by elders, see the discussion in W-P, II, p. 327.

40. Ab. Zar. 10a: יום גנושיא של מלכות מי יום גנושיא אמר רב יהודה יומם ממעידין בו את המלך.

It is interesting that Maimonides may also have had "installation" rather than "appointment" in mind when he included this law in the section *Hilkot Keleh ha-mikdash* showing that it was a matter of ceremony only. Comp CT-H, IV, p. 242.

אין ממעידין מלך בחוצה הארץ... ואין מושחים מלכים אלא על גבי המעיין.

This refers to inauguration and not appointment, though אלא אם נושא לכבודה is questionable.

41. See LS-GL; Levy NHWB I, 349a; J-D s.v. גנושיא. Comp. full discussion in Schürer, *HJP*, I, II, p. 26, note 27; Pinneles, p. 150.

42. Ta'an. 3.8: שלוח לו שמעון בן שטח.

מה שלחו בני לשכת הגזית מהו?

The term "bene Lishkat ha-Gazit" may have been read "boneh—the builder of the Lishkat ha-Gazit." See Frankel₁, p. 61.

43. Eduy. 5.5. See full discussion, Kaminka₁. See also *Exc. XX*.

44. Sanh. 1.5: אין עישין סנהדריות לשפטים אלא ע"פ בית של ע"א.

ולפייך יש להבהיר על מה סמכו רבוחינו זיל בימי: תורת האהל הבית השני שנთערבו השפטים לתקן בתיהם דין של פלמים, אם משומש שנאמר "לשפטיך" שמצויה להושיב בתיהם דינין שפטים נגילה... אבל משפטלה חלוקת השפטים אין מקום אף לסתור זומה... ורוחק לאמר שזה היה מתקנת חכמים בלבד וכור לימים מקדם וככל... וכבר היה מקום להקיש ולאמור שפטין זהין של הפלמים היו גם כן על אותה הדרך זכר לבתי הדינים של השפטים...

ומשם שולחין ובודקין כל מי שהוא חכם... ומשם: (425) Tos. Sanh. 7.1 מעלין ומושיבין אותו בלשכת הגזירות.

זquo אין מושיבין אותו בלשכת הגזירות אלא א"כ: גזירה רצין בעירו.

47. Cf. IH₂.

48. Sanh. 1.5: אין דין לא את השבט... אלא ע"פ ב"ד של ע"א.

See *Exc.* 1 end.

49. Cf. discussion in Sanh. 15b. Perhaps the law is based remotely on the incident recorded in Judg. 30. See B-HDB, IV, p. 401.

50. גזירות שבת שחתאת.

51. השבט שהוויה.

52. Deut. 13.14-15: יוצאו אנשים... וידיחו... ודרשת וחקרת ושאלת היטוב.

53. Sanh. 71a; Tos. Sanh. 14.1 (436): עיר הנדחת לא היתה ולא עתידה להיות.

54. Sanh. 16a: עסקי נחלות.

55. *Ibid.*, מחרורתא כדרוב מתנה. The Yerushalmi 19b mentions only this opinion, אמר מונאי במושיא שבת הא מתניתה.

55a. Cf. also Rackman, p. 163. The procedure in the trial of a *zaken memra* is stressed in the Mishnah. However, the biblical *shofet* may refer to any official of the state, in a general sense, and is not limited to "judge." See Albright₁, p. 216.

56. Cf. also Rackman, p. 163. The procedure in the trial of a *zaken memra* is stressed in the Mishnah. However, the biblical *shofet* may refer to any official of the state, in a general sense, and is not limited to "judge." See Albright₁, p. 216.

57. See text, above note 55a. Cf. Tos. Sanh. 14.13 (437): המחייב לערוך: דבר מזרבי תורה חייב.

58. Sanh. 11a: משפטנו תני זכריה ומלאכי נסתלקה רוח הקודש מישראל. Cf. I Macc. 9.27: "Since prophets had ceased." See also *Seder Olam Rabbah*, XXX; T-Z, p. 30; SZ₂₁, p. 110.

59. Josephus, *War* 2.13.5 [261]; 6.5.2 [285], speaks of a number of false prophets or imposters who tried to sway the people. See also Matt. 24.11; Mark 13.22.

Beguiling the people was regarded as a political matter, to be dealt with by Rome. Most probably these incidents were investigated by some court other than the Halakic Court. The Jewish officials of the state, who prepared the evidence, turned the culprit over to the Roman authorities on the count of disturbing the peace and for unlawful assemblage. Hence "false prophecy" fitted into the category of political disturbance and not religious infraction. The courts that tried such cases were of the Hellenistic type. Only when clearly known that religious law has been violated did

the Jewish Sanhedrin act. Such for instance may be the trial of Stephen. See *SZ₁*, p. 188 ff.

60. *Sanh.* 1.5: **וְאֵין מָזִיאֵין לַמְּלֹחָמָת רֶשׁוֹת אֶלָּא עַיִּפְעַב בֵּין שֶׁל עַיִּא.**

61. The autocratic monarchs of the Second Temple era surely did not wait for approval by the religious court of seventy-one when undertaking their martial campaigns. The mishnaic text simply expressed the constitutional right of the court as based on biblical precept. See *Exc. XXVIII*, sec. 5.

62. See text above, in note 55a.

63. *Ant.* 18.1.4.

64. *Sanh.* 16a: **דָּבָר הַגָּדוֹל דְּבָרֵיו שֶׁל גָּדוֹל.**

65. *Sanh.* 18a: **כְּהֵן גָּדוֹל שְׁהַרְגָּת הַנֶּשֶׁת הַוְּא כְּהָדִיקָּת לְכָל דְּבָרֵיו.**

66. *Sanh.* 11.4: **מַעֲלֵין אָתוֹ לְבֵין הַגָּדוֹל שְׁבִירּוֹשָׁלִים.**

67. *Tos. Sanh.* 14.12 (437) : **זָקֵן מִמְּרָא שְׁהָרָה וְעַשְׂתָּה כְּהָרָאת חִיבָּב :**

67a. *Sanh.* 88b: **זָקֵן מִמְּרָא שְׁבָרוֹ בֵּין לְמִתְחָלָל לוֹ מַוחָלִין לוֹ... עַל זָקֵן מִמְּרָא לֹא.**
הַוּדוֹ לוֹ כַּדִּי שְׁלָא יַרְבוּ מְחֻלּוֹת בִּישראל.

68. *Sanh.* 11.2; *Tos. Sanh.* 3.4 (418) : **אֵלָא :** **בְּבֵין שֶׁל עַיִּא Comp. CT-H, IV, pp. 247-248.**

69. *Sifre Deut.* 154: **עַל הָרָאת בֵּין הַגָּדוֹל אֲשֶׁר בִּירוּשָׁלָם חִיבָּבִים מִיתָּה וְזָקֵן.**
חִיבָּבִים מִיתָּה עַל הָרָאת בֵּין שְׁבִיבָּה.

Cf. Buchler, p. 40, note 33 and Herzfeld₂. Derenbourg, p. 288, note 1 and Hoffmann₁, p. 47, think that there was no court in Jabneh before 70 C.E. Comp., however, LG₁. See above, Chap. VIII, note 12a.

70. See note 74, below.

71. *Ber.* 28a.

72. *B.M.* 59b; *Yer. Moed Katan* 81d.

73. *Eduy.* 5.5: See *Exc. XX.*

74. *Sanh.* 11.4: **אֵין מִמְּתִין אָתוֹ לֹא בְּבֵין שְׁבָעוּרוֹ וְלֹא בְּבֵין שְׁבִיבָּה אֶלָּא.**
מַעֲלֵין אָתוֹ לְבֵין הַגָּדוֹל שְׁבִירּוֹשָׁלִים.

75. *Midrash Hagadol* on Ex. 21.14: **אֵין מִמְּתִין אֶלָּא בְּפָנֵי הַבַּיִת :**

See *Tad, Hilkot Sanhedrin*, 14.11.

76. Simon ben Shattah's letter to Theudas and Honi may illustrate such cases. Cf. *Ta'an.* 3.8; *Ber.* 19a; *Pes.* 53a; *Bezah* 23a; *Mekilta, Pisha II* (Ex. 12.2) ed. Laut. p. 22: **רַבִּי יַעֲשֵׂה אָמֵר מַנִּין אַתָּה אָמֵר שְׁאַלְמָן מַעֲכָרִין אֶת הַשָּׁנָה אֶלָּא בְּבֵין הַגָּדוֹל שְׁבִירּוֹשָׁלִים.** Cf. Newman, p. 40.

77. *R.H.* 4.4: **הַחֲקִינוּ שֶׁלֹּא יְהוּ מִקְבְּלִין אֶלָּא עַד הַמִּנְחָה.** After the Temple was destroyed, Rabban Johanan ben Zakkai ordained that evidence for the new moon may be admitted throughout the day. See below, note 84.

78. *Ibid.* Cf. Büchler, p. 41. See Allon₄, p. 66, n. 57.

79. *R.H.* 2.5: **חַדְרָה גְּדוֹלָה הָיָתָה בִּירוּשָׁלָם וּבֵית יְעֹזֵק הָיָתָה נִקְרָאת וְלַשְׁמָן כָּל הַעֲדִים מִחְכָּמִים וּבֵית דִין בּוֹדְקִים אָתוּם... הַתְּקִין ר' ג' הַזָּקָן.**

80. The special consent of the Nasi was necessary for the intercalation of the month. See below, note 86.

וקבלו הכהנים אותו ואות בנו ופסלו את עברו וכשobao לפני ב"ד קבלו אותו ואות עברו ופסלו את בנו.

Comp., however, LF₁, p. 28; CT-H, IV, p. 253.

81a. Comp. similarly the jurisdiction in the Sotah law. See above, note 4a.

81b. R.H. 1.6. See Albeck₈, p. 487.

82. Sanh. 1.2: עבור שנה בשלשה. This is according to Rabbi Meir; Rabban Simon ben Gamaliel believed that the matter was begun by three, discussed by five and decreed by seven. Cf. Newman, p. 38.

ר' באז אמר מקודש וכל העם עונין אחריו מקודש מקודש.

84. R.H. 4.4: ועוד זאת התקין ריב"ז שאפ' ר' באז ב"ד בכל מקום שלא יהו העדים הולכין אלא למקום הוועך.

85. The term "Rosh Bet Din" is not synonymous with "Ab Bet Din" but with "Nasi." Comp. notes 83 and 86. See *Exc. XXIII*.

86. Sanh. 11a: אין מעברין את השנה אלא אם ירצה הגשיא.

ומעשה בר"ג שהלך: Comp. this baraita with the similar record in *Eduy.* 7.7: ליטול רשות מתגמון בסוריה ושהה לבא ועברו את השנה על תנאי לכשרצתה ר' ג' וכשבא אמר ר' רוזה אני ונמצאת השנה מועברת.

87. Par. 3.7: וכן ני ישראלי היו מקודמים... ומפעמים היו את הכהן השופט את הפלרה מפני הצדוקים שלא יהיו אמורים במעורבי שם היה נושא.

88. Sot. 1.4: היה מעילין אותה לב"ד הנזול בירושלים. See *Exc. XXVIII*.

89. Deut. 21.1. This was conducted by a delegation designated by the court. See Sanh. 14a: ר' ש' אמר ב': ויצאו זקניך... הרי כאן ה... Similarly Sanh. 1.3:

עריפת עגלת בשלשה דברי רבי שמעון ורבי יהודה אומר בחמשה ב. The presence of the whole court was unnecessary. See also Sot. 9.1; Sot. 44b: שלשה מב"ד הגדול שבירושלים היו יוצאים עד שיבואו לב"ד בשלשת הגזית וימזדו.

Büchler thinks it was a priestly court which supervised many of these functions. However in the last decades of the Second Temple the priests fulfilled their duties only under the Sanhedrin's supervision. Cf., however, R. Patai, "Eglah Arufah," *JQR* (July, 1939), XXX, p. 68.

90. Yoma 1.3: מסרו לו זקנים מזקניהם ב"ץ. The elders read for the priest from the prescribed rite of the day and directed him on the procedure for his service. The statement "elders from among the elders of the Bet Din," points to the fact that it was a committee function of the Great Sanhedrin (and not any particular Pharisaic Bet Din outside of the national Sanhedrin, as held by LF).

Since the Sanhedrin considered the Temple not merely a priestly institution but of concern to all Israel, it is evident that special care was taken in this supervision. This is also another example of the Pharisaic Rabbis supervising the Sadducean priests in the observance of the law. The procedure fits in with the situation prevalent in the last decades of the Second Temple, after the period of the Zugot, when the Sanhedrin was

wholly dominated by the Pharisees. Comp. Baeck, p. 21; LF₁, p. 28 and CT-H, IV, p. 249.

90a. See above, Chap. IX, notes 5 and 8. The Sanhedrin's interest in the Temple service is also evidenced in their supervision of the casting of lots held in the Gazit Chamber (Tamid 2, end). The priests went into the Gazit Chamber to recite the Shema after the completion of their daily tasks in the Temple (Tamid 4 end).

Another example of the Sanhedrin's supervision is in Yoma 2.2: **מעשה** **שניהם** **שוין**... **וזחף** **איך** **מהן** **את** **חברו**... **התקינו** **שלא** **יהו** **חרומין** **את** **המוחב**
אלא **במיט**.

90b. In time of drought, the Nasi and Ab Bet Din would proclaim a fast: (Ta'an. 2.1). That these ceremonies were actually performed may be seen in the relations of Simon ben Shattah to Honi, (Ta'an. 3.8). See above, note 42 and also *Exc. XIX*.

The fact that the Ark is mentioned does not point to a later date (after Temple days); before then there were also individual synagogues in Jerusalem. Comp. Ta'an. 3.6: **מעשה** **שיירזו** **וקנים** **מיירשלים** **לעריזום** **ונזרו** **חענית**: This undoubtedly refers to the Great Sanhedrin in Jerusalem during Temple Days.

91. Sanh. 1.5; Shebu. 2.2: **אין** **מוסיפין** **על** **העיר** **ועל** **העורות** **אלא** **בכ"ז** **או** **בז"**. CT-H, IV, p. 246 regards the parallel mishnahs as two separate items: M. *Shebuot* is **להלכה** (theory); M. Sanhedrin is **למעשה** (practice).

92. See Büchler, *Levitical Impurity in Jerusalem*.

92a. I Macc. 12.35; T-Z, p. 207.

92b. *Ant. XIII*, l. 181 reads "Jonathan gathered all the people together."

93. *Ant. 20.8.11*.

94. Cf. Schürer, *GJV*, II, p. 4, 260.

95. *Ant. 20.9.6*.

96. The dignity of the priesthood (in distinction to the Levites) is apparent from Ex. 28.40 **ולבני אהרן** **חעשה** **כתנות**... **לכבוד** **ולהתפארה** **הה**. Compare similarly, for the High Priest, Ex. 28.20.

Concerning the subservience of the Levites to the priests, see Num. 3.9: **ונחתה** **את** **הלוים** **לאהרן** **ולבניו** **נחותים** **הה** **לו** **מאת** **בני ישאול**.

96a. *Against Apion* II, 22.

97. That Agrippa acted without authority is seen in *Ant. 20.9.6*: "For they said that this would be a work worthy of the times of his government that he might have a memorial of such a novelty as being his doing." On this basis Allon's view, (Allon⁴, p. 126), opposing Schürer who regarded the body as a "court of priests," is also untenable. See, however, W-P, II, p. 346, that it was Agrippa's prerogative to assemble the Sanhedrin.

98. Mid. 5.4: **לשכת** **הגויית** **שם** **ויתה** **סנהדרי** **גולה** **יושבת** **וזונה** **את** **הכהוגה** **ומושבין** **אותו** **בלשכת** **הגויית** **שם** **יושבין** **ובודקין** **את** **יוחשי** **כהוגה** **ואת** **ירומי** **ליה**. Cf. I. H. Weiss, Chap. 21; Gulak, p. 20.

99. *Against Apion*, 1.7.

100. Sanh. 32b: זדק צדק תזרוף... אחר חכמים בלשכת הגוזית.
 גזרך אחד להלכה... משם הלכה יוצאת ורוחת בישראל: Sanh. 88b ; Yer. Sanh. 19c:

101. Hor. 1.3 מה שאין כן בדיני נפשות שבהוראה עד : (474) כולם מקטום
 מהomer בהוראה מה ש אין כן בדיני נפשות שבהוראה עד .

CHAPTER XI: JUDICIAL PROCEDURE

1. Cf. M. Waxman, *Students' Annual of Jewish Theological Seminary*, (N. Y., 1914); "Judges" JE, VIII. See also above, Chap. VIII, notes 12a, 13.

2. Cf. Mendelsohn, *Jewish Criminal Procedure*, p. 108 ff. See bibliography in *Ain Mishpat* (see above, Introd. note). Cf. B. Uziel, "Din u-Mishpat," *Sinai*, IX (1945), p. 107 on the Jewish concepts of law and courts. Cf. also Barong, Vol. II, p. 432 n. 16.

גזרך אחד מהן לזכות רואה יש שם עשרים ושלשה: Tos. Sanh. 7.1 (425)

4. See above, Chap. X.
 הציגו שני המעדנות באש וירדו ובואו להם לשלכת הגזיה:
 5. Tamid 2.5-3.1 : אמר לום הממונה בראו והפסיטו
 וירדו ובואו להם לשלכת הגזיה לקרות את שמע אמר להם
 ובמוניותם ברצנו בריבגה אהם

לפייך אין דין לא בעיש ולא בעויס: 8. Ant. 14.9.3.

9. *Betzah* 5.2: וְאֵילוֹ מִשׁׁוּם רְשׁׁוֹת... לֹא דָן. Even in Roman courts Jews were not called to trial on the Sabbath day or at a late hour on Friday. This is expressed in Augustus' decree, *Ant.* 16.6.2. Though this edict applied primarily to Jews in the diaspora, it was observed also in Palestine. Cf. Juster, II, pp. 94, 122. See below, Chap. XII, note 9.

10. See *Exc. XXIV.*

11. *Tos. Sanh.* 7.1 (425) : **הוּא ומוֹפֵלָא שְׁבַחֲן בָּאִין לְבִיד** וככ' :

Cf. *Gulak*, II, 2, 13.

12. *Sanh.* 11.2 : **כֶּךְ לִימֹדֵת וְכֶךְ לִימֹדוֹ חֶבְרִי אָם שְׁמַעַן אָוֹמְרִים לְהָם**.

13. *Pes.* 66a : **נִאמֶר מַעֲדוֹ בְּפֶסֶח וַיֹּאמֶר מַעֲדוֹ בְּתַמִּינָה וְעַזְבָּן קִיזָּוּ**.

14. *Peah* 2.6 : **וְכָא מַעֲשָׂה לִפְנֵי לְשָׁכַת הַגִּיאִת** : *Eduy.* 7.4 : **וּלְעֵלָה לְשָׁכַת הַגִּיאִת**.

15. *Sanh.* 34a ; 43a : **אִיד יְוִיסִי בֵּית חַנִּינָא אֶחָד מִן הַתְּלִמְדִים שְׂוִיכָה וּמְתָה**

16. *Sanh.* 34a : **רוֹאֵין אָוֹתוֹ כָּאֵלוֹ דָּה וּוֹמֵד בַּמְקוֹמוֹ**

אמְרוּ שְׁנִים טֻמֵּן אֶחָד מִבְּמִקְרָאוֹת... אֵין מַונֵּן לְהָנָה אֶחָד... *Sanh.* 34a : **בְּזִוְּגָה בְּזִוְּגָה בְּזִוְּגָה בְּזִוְּגָה בְּזִוְּגָה בְּזִוְּגָה**

- גופו של פרובול מוסר אני לכם איש פלוני ומלוני.
Git. 36a; Shebi. 10.4: הדין שבסמכות פלוני.
 Cf. Blau, *Prosbul in Lichte der Griechischen Papyri unter der Rechts-Geschichte*, p. 122; SZ₂₂, p. 341 ff.; Moore, III, p. 80.

רבי יוסי: The priestly genealogy also was kept in the courts. Cf. Kid. 4.5: אומר אף מי הייתה חותם עד בערכיו והשנה של צפורי.

During the War against Rome many people sought to burn records of different kinds to free themselves from official responsibility. See *War* 2.17.6; cf. Juster, II, p. 107.

18. Sanh. 11.2: שמןנו יוצאת תורה לכל ישראל.

19. Tos. Shebi. 3.10 (64) : שמאי הוזען אומר אילו היהתה השעה פנוייה גוזר אני: עליה שלא תזרע... ביד שלאתרי גוזר ולא תזרע.

20. Eduy. 8.4: העז יוסי בן ייזור. In the case of the intercalation of the month, the Nasi's presence was of absolute necessity. Cf. Eduy. 7.7. See above, Chap. X, note 86.

20a. Cf. Halevy, Ic, p. 666; Frankel₁, p. 61. See also Allon₄, p. 61.

CHAPTER XII: DISSOLUTION OF THE GREAT SANHEDRIN

1. SBH₂, p. 169; S_Z, JQR., (April, 1937), XXVII, p. 388; *idem*, (April, 1941), XXXI, p. 344.

2. Halevy, Ic, p. 62. See also his analysis of the Sanhedrin's history in Ic, p. 608.

3. Hoffmann₂; LF₁, p. 84.

4. *War*, 2.8.1; Graetz, III, p. 255; Schürer, II, p. 208, note 72; Derenbourg, p. 90, note 1.

5. Lehmann, REJ., XXVII, p. 14; Yawitz, VIII, p. 82, B-HDB, IV, p. 401.

ארבעים שנה עד שלאחר הבית גلتה סנהדרין וישבה לה בחנות.

"Hanut" may refer to stores or the market place outside of Jerusalem, or the place of Hanan, the high priest, or perhaps a station (חנה). See Derenbourg, p. 465, note 8; Klein, p. 115-116; Newman, p. 71-72.

7. See literature mentioned in note 5, above.

8. Graetz, III, p. 145, note 19. See also note 4, above.

9. Concerning the freedom granted in religious matters see above, Chap. X and note 11 therein.

See Josephus, *Ant.* 16.6.2, quoting Augustus: "It seemed good to me and my counsellors according to the sentence and oath of the people of Rome that the Jews have liberty to make use of their own customs according to the law of their forefathers as they made use of them under Hyrcanus, the high priest of Almighty God; and that their sacred money be not touched but be sent to Jerusalem and that it be committed to the care of the receivers at Jerusalem and that they be not obliged to go before any judge on the Sabbath day nor on the day of the preparation to it, after the ninth hour."

10. John 18.31.

וכורני כשייתי חינוך ומורכב על כתיפו של אבא היביאו בת כהן שוויינה והיקופה חבלי זמורות ושרטוטה.

See also Sanh. 52b, Tos. Sanh. 9 (429), Yer. Sanh. 24b. Cf. H. Lietzmann, *ZNW* (1932), p. 82; M. Goguel, *Jesus* (2nd ed. Paris, 1950), p. 411.

12. Sanh. 5.2; Sanh. 41a: בן זכאי בעוקזי תאנים.

13. *Ant.* 13.10.5: "These have so great a power over the multitude that when they say anything against the king or against the high priest they are presently believed." *Ant.* 18.1.4: "They (the Sadducees) addict themselves to the notions of the Pharisees because the multitude would not otherwise hear them."

אע"פ שאנו נשוי לדוקיות قولן נשמעות לחכמים (Tos. Nid. 5.1 (645):
Yoma 19b: אע"פ שדוקים אנו מחריאין אנו מן הפרושים). Tos. Yoma 1.9 (181):
אע"פ שאנו דורשין אין אנו עושין. שומיעין או לדברי חכמים.

13b. Cf. E. J. Bickerman, *JQR*, XXXVII, 387-405.

13c. See Barons, Vol. I, p. 239.

13d. *Ibid.*, p. 402 n. 36.

14. Peah 2.6: "Abbah" mentioned in this Mishnah may refer to Simon the son of Hillel and father of Rabban Gamaliel the Elder.

14a. Even if we assume that Rabban Gamaliel is of Jabneh, it is possible that he came as a young man to the Gazit Chamber. This does not refute the notion that the incident occurred about 65 C.E. The last Mishnah in Yebamot distinguishes between Rabban Gamaliel the Elder and Rabban Gamaliel of Jabneh.

15. *Eduy.* 7.4.

16. Sot. 9.9: משרבו רצחנים בטלה עגלה פרופה.

17. *War* 2.13.2.

18. Sot. 9.9: משרבו המנאפים... פסקו המרים וריבין הפסיקן.

Cf. Laut₁, p. 144. See Allon₄, p. 56.

19. See note 1 above and also controversy in the American Hebrew Weekly, *Hadoar*: a) SZ, תשובה לבקורת, Vol. 20, No. 43; b) D. Shapiro, הסנהדרין בימי בית שני, Vol. 22, No. 6, dated 12-12-41; c) SZ, לבירור העוניים Vol. 22, No. 7, 12-19-41; d) D. Shapiro, עוד בעניין הסנהדרין, 1-9-42. Also S. H. Setzer, קיום דיני נפשות בישראל בימי בית שני in leaflet *Oholim*, Jan.-Feb., 1942, No. 1. See *Exc XXX*.

19a. Cf. Juster, II, p. 133, and review in Reinach, *REJ*, Vol. 70, p. 94; Stephen Liberty, *The Political Relations of Christ's Ministry*, Oxford, 1916, Appendix: "The life and death powers of the Sanhedrin under the procurators," p. 141 ff. See p. 153, where the talmudic statement about the "forty years," is regarded as apologia. Liberty asserts that there was freedom of action on the part of the Sanhedrin in internal affairs, and that the death sentence was frequently inflicted.

19b. Cf. W. H. Roscher, "Die Zahl 40 in Glauben, Brauchen und

Schriften des Judenthums," *Abh. d. Sächs Ges. d. Wiss. Philo-hist Klasse*, 127.

20. Yer. Sanh. 18a; 24b: קודם לארבע שמי עד שלאחר ביה ניטלו דיני גשות (ישראל).

21. See note 6, above.

22. Ab. Zar. 8b; Sanh. 14b: וקמת ועלית אל המקום מלמד שהמקום גורם.

ואלה המשפטים אשר תשים נמצאים 22a. Mek., (ed. Laut.), III, p. 41: למין טנהדרין בזד מובחן.

מעם מובהקי תקחנו למות נמצאים למין טנהדרין בזד מובחן II, p. 292.

22b. See *Exc. XXX*.

22c. *War* 2.17.2: "This was the true beginning of our war with the Romans for they rejected the sacrifice of Caesar on this account."

23. Sanh. 37b; Ket. 30a; Sot. 8b: מיום שחורב ביה אע"פ שבטלה טנהדרין יין ארבעים מיתות לא בטלו.

בימי ר'ש בן יוחאי ניטלו דיני מנות מישראל. Neither the Tosefta nor the Babli mention this text, which is probably an addition like that of note 19.

23b. U. Holzmeister, "Zur Frage der Blutgerichtsbarkeit des Synderiums," *Biblica*, Vol. 19, (1938), p. 43-59; 151-174, reviews the entire controversy and examines again (p. 169) the rabbinic sources pertaining to the right of capital punishment. He notes the contradiction in rabbinic sources (Ket. 30a, Sanh. 37b, Sotah 8b; מיום גולן; Ber. 58a: ארבעים שנה עד שלאחר). See also Bücksel, *ZNW*, (1931), p. 206, who questions the number "forty" (See above note 19b). The reading of ארבע reconciles the difficulties. 24. See note 23, above.

24a. It is in this sense that the later Rabbis, under the Patriarchate, may have carried out the principle of punishment. Much of their powers depended upon the autonomy they possessed.

25. Yoma 39b, Yer. Yoma 43c: ארבעים שנה קודם חורבן הבית לא היה גורל: עולה ביוםין ולא היה ולחות היכיל גותחות מלאיהן.

25a. Ibid: 26. *War* 6.5.3. 26a. See *Exc. XXX*.

ובאות אל הכהנים הלוים ואל השופט אשר היה: אונן מיום Sanh. 52b: בימים ההם בזמן שיש כהן יש משפט בזמנ שאין כהן אין משפט. דגלוין מארעין לית לו רשות למקטל.

See also Nachmanides on Num. 35, 39; E-TM, *ad loc.* and on Ex. 21, 14.

26c. *War* 4.5.4 (335, 338).

27. Sot. 9.12: משפטה טנהדרין בטלה השיר מבית המשפטאות.

27a. Hul. 92a.

27b. Sanh. 37a.

28. For a summary of the main points of this thesis see my article, "Sanhedrin," *Universal Jewish Encyclopedia*, IX, p. 361.

29. See *Exc. XXVII*.

30. For the question of the re-establishment of a central religious au-

מאמר על כל ענייני סנהדרין, see Reifmann's booklet *Berlichev*, 1888; L. Ginzberg, *United Synagogue Record*, 1917, pp. 43-45; C. Tschernowitz, על הורמים של היהדות אמריקא, *Shevili ha Hinuch* (N. Y., 1926-7), Vol. 2, no. 4, especially the conclusion on p. 30; R. Margoliouth, יסוד המשנה וערכתה, *Lwow*, 5691-1931, p. 36 n. 16; Z. Makobski, Tel. Aviv, 1938; Z. Yawitz התורה והמודנה, ואשיבת שופטיך, *Sinai II*, 1938, p. 287; B. Revel חידוש הסמיכה במדינתנו המחוותת, *Horeb*, Vol. V (Mar. 1939) p. 1; J. L. Maimon חידוש הסנהדרין במדינתנו המחוותת, *Sinai*, XIII, 1949, p. 225 and in book form (published by Mosad Rav Kook, Jerusalem, 5711); S. K. Mirsky, *Jerusalem as a Religious Center*, The Mizrachi Library, No. 1, N. Y., 1950; *idem.*, חייזוש הסנהדרין בישראל, *Talpiot*, V, (N. Y., Dec., 1950), p. 119 ff; *idem.*, בין שקיעה לוריחה, N. Y., p. 292 ff; Newman, *Semikhah*, p. 172 ff; "Rabbi Maimon and the Sanhedrin Issue," *The Reconstructionist*, N. Y., Vol. XVI, No. 19, Jan. 26, 1951; S. Zeitlin, "Is a Revival of the Sanhedrin in Israel necessary for modification of the Halaka," *JQR*, XLII, No. 4, April 1952; S. Federbush, *Mishpat ha-meluchah b'yisrael*, Jerusalem 5712, pp. 44-45, 90 ff; Chief Rabbi Isaac I. Halevi Herzog, "An Open Letter on the Renewal of the Sanhedrin," *Talpiot*, VI, March 1953, pp. 89-91. The latest proponent is J. L. Maimon in his article, על חייזוש רשותם גדולי רשותם על סנהדרין, *Sinai*, Jerusalem, Jan. 1953; see particularly his note, p. 139: "ובכן שבעיקר צריכה להווסף ולהתחדש לשם בירור הלכות ושאלות מתחדשות פעם בפעם חמיה המורנה. אין לסנהדרין זו כל רשות להביס אליה שם מתקנים אבל תחילה לה הרשות לתקן תקנות ולמצוא את הזרע הרואה וגדתאיימה שהتورה והמדינה תלכנה י"ז ב'צ".

31. Comp. Isa. 1.26.

Notes to Excursions

EXCURSUS I: ATTEMPTS AT A SOLUTION

1. Cf. A. Kuenen "Ueber die Zusammensetzung des Sanhedrin," *Gesammelte Abhandlungen zur Biblischen Wissenschaft* (Freib. 1894), p. 49 ff.
2. *Die Gottesdienstlichen Vortrage der Juden*, (Frankfurt A.M. 1892), p. 37 anm. d. (Heb. ed: *Ha-derashot b'yisrael* (Jerusalem, 1949), p. 22 and note 10 on p. 236).
3. "Ueber die Zeit der Entstehung des Synedrins," *ZRIJ*, II, pp. 301-312.
4. *Geschichte des Volkes Israel* (Braunschweig, 1847), II, pp. 380-396.
5. *Geschichte der Juden* (Leipzig, 1888), III a, p. 102 ff.
6. *Darke ha-Mishnah* (Leipzig, 1859), p. 11; *ZRIJ*, (1844), I, p. 170 ff; Frankels, p. 347.
7. *Geschichte* 1, pp. 120-128, 270-281.
8. *Urschrift* (2nd Ed. Frankfurt A.M. 1928), pp. 114, 121 (Heb. ed: *Ha-mikra v-targumov* (Jerusalem, 1949)).

9. *Op. cit.*, 74 ff. (See above, note 1).
10. *Die Pharisaer und die Sadducäer* (2 ed., Hanover, 1924), p. 27.
11. *GJV*, II, p. 248; *HJP*, II, I p. 174.
12. "Notes sur le Chapitre 1er des Pirke Abot," *REJ* (1889), XIX, p. 188.
13. Derived from the *segol* ('.).
14. In a review of S. Zeitlin's, *Who Crucified Jesus*, *JQR* (April, 1943), XXXIII, p. 493.
15. *Dorot ha-rishonim*, Ic, p. 607.
16. *Toledot Yisrael*, 3rd ed., Jerusalem-Tel Aviv, 1929, IV, p. 19.
17. "Der oberste Gerichtshof in der Stadt des Heiligtums" *Jahres-Bericht des Rabbiner — Seminars für das Orthodoxe Judenthum*, (Berlin, 1877-8), pp. 3 ff.
18. *Idem*, "Die Präsidentur im Synedrium," *Magazin* 1 (Breslau, 1878), V, p. 94 ff.
19. *Die innere Einrichtung des grossen Synedrions zu Jerusalem* (Breslau, 1894).
- 19a. "Peulot nesieh Yisrael bizman bayit sheni," *Kol Kitbe M. L. Lilienblum*, (Cracow, 5760-1910) I, p. 210. (This is a reversal of I. H. Weiss' view, see below note 20).
- 19b. *Erek Milin* (Warsaw, 5674).
- 19c. *Bekoret ha-talmud* (Kritisches-talmudisches Lexicon) Band I, Wien, 1863.
20. *Dor Dor v-Dorshav* (Vienna, 1871), 1, pp. 35, 103.
21. *Le Synhedrin ou Grand Conseil de Jerusalem* (Strassbourg, 1889), p. 77.
22. *Dibre Yeme Am Olam*, (Tel Aviv, 1933), II, p. 83.
23. *Yesode ha-mishpat ha-ibri* (Berlin, 1922), IV, 7 ff.
24. *Das Letzte Passamahl Christi*, (Leipzig, 1908), p. 30.
25. *Historia ha-yisraelit*, (Jerusalem, 1924), III, p. 102.
26. *Das Synedzion in Jerusalem und das grosse Beth Din in der Quaderkammer der Jerusalemischen Tempels*, (Vienna, 1902).
27. *Hastings Ency. of Religion and Ethics*, (1902) II, s.v. "Sanhedrin."
28. *TLZ*, XXVIII, (1903), pp. 345-348. See also *GJV*, II, sec. 23, III, p. 247, note 26.
29. *Jerusalem: The Topography, Economics and History* (London, 1907) I, p. 422; *idem*, "The Jewish Constitution," *The Expositor*, 7th series, (Sept. 1906), pp. 193-209, (Oct. 1906), pp. 348-364.
30. L'toledot ha-Sanhedrin hagedolah b'yisrael," *Hashiloah* (July-Dec. 1914), XXXI, p. 404 ff.
31. Based upon Sanh. 11.2: אלו ואלו באין לשכת הגזית.
"These came to the Gazit chamber."
32. Based upon Sot. 9.10: העמיד זוגות. See discussion above in Chap. IV, end.

33. "Hillel u-bet midrasho, ha-sanhedrot b'yerushalayim," *Hatrukah*, III (Nisan 5678-1918), p. 290 ff.

34. "The Crucifixion of Jesus Re-examined," *JQR*, April 1941, XXXI, p. 334; *Who Crucified Jesus?* (N. Y., 1942); "The Political Synedrion and the Religious Sanhedrin," *JQR*, (Oct. 1945), XXVI, p. 109; *Synedrion in the Judeo-Hellenistic Literature and Sanhedrin in the Tannaitic Literature*, *ibid* (Jan. 1946) p. 307 in answer to Prof. Wolfson, "Synedrion in Greek Jewish Literature and Philo," *ibid*, p. 303-306.

35. *Sanh.-Makkot* (Giessen, 1933). Cf. also Newman, *Semikhah* (Manchester, 1950), p. 70-71.

36. *Ha-nasi b'sanhedrin b'yisrael* (Vienna, 1925).

37. S. Baron, *A Social and Religious History of the Jews* (N. Y. 1937), II, p. 40, reveals that the solution given by Taubes "though partly suggested by me appears to be more and more dubious."

38. "Sanhedrin" *JE*, XI, p. 41.

38a. "De Senaat van Jerusalem en het groote Sanhedrin," *TTT*, II (1904), pp. 297-316.

39. *Judaism*, 1, pp. 85 ff.

39a. *Ibid*, III, p. 32 (annotation by LG).

39b. *Ibid*, I, p. 261.

40. *Studien zur Jüdischen Selbstverwaltung im Altertum*, (Berlin, 1936), pp. 99 ff.

41. "Al ha-Sanhedrin," *Zion*, III (July 1938) pp. 356-366.

42. "Semikah u-minnui," *idem*, VIII, p. 91; "Ha-Sanhedrin v'nesiah," *idem*, pp. 165-178.

43. *Philo and the Oral law*, p. 91.

43a. "L'reshit ha-yeshivot u-mahuta" *Horeb*, V. (Mar. 1939) p. 138.

44. *Monumenta Talmudica* II, p. 18. Similarly LF₁ suggests a priestly and an anti-priestly body. See below note 56.

45. "Ha-zugot u-mikdash Honi," p. 246; "Ha-nesi'ut b'sanhedrin," *Bitzaron*, (Feb. 1946) XIII, p. 305 ff; *Toledot Halakah*, (N. Y., 1950), IV, especially the summary on pp. 260-1.

46. IV p. 252.

46a. This opinion is controverted simply by recalling the name and place of the first Ab Bet Din, Jose ben Johanan of Jerusalem.

46b. Thus Tschernowitz interprets Abtalion's statement in Abot 1: שמא חחובו חובה גלות.

47. "L'sheelat tiv Bet din shel 71," *Louis Ginzberg Jubilee Vol.* (1945) p. 209.

ועשית ע"פ הדבר אשר יגידו לך מן המקום ההוא... ע"פ התורה אשר יירוץ ועל המשפט אשר יאמרו לך תעשה.

47a. 48. *Zion*, IX (Jan. 1944), pp. 71-83.

48a. See *Exc. IV*.

48b. See *Exc. X*.

49. *L'toledot ha-sanhedrin b'yisrael*, (New York, 1950), p. 13.
50. *Perushim, zadokim, kanaim v-notzrim*, (Tel Aviv, 1948) pp. 22, 23, 240 and especially p. 221.
- 50a. *Ibid*, p. 340.
- 50b. *Ibid*, p. 30.
51. "Civil and Criminal Procedure of Jewish Courts," *Students' Annual of Jewish Theological Seminary*, (N. Y., 1914) pp. 259-309.
52. "Nesiuto shel Rabban Johanan ben Zakkai," *Sefer Klausner* (Tel Aviv 1937), pp. 154-170.
53. "Parhedrin-Porertin," *Zion*, IV (July 1939) pp. 294-306.
54. P. Dikshtein, "Mishpat u-medinah b'yisrael," *Hatekufah*, XXVIII p. 374, XXIX p. 245, XXV p. 664.
- 54a. B. Z. Bokser, *The Wisdom of the Talmud*, N. Y. 1951.
55. "Ha-Nesi'ut v-ha-sanhedrin b'yisrael," *Hatekufah*, XXX (N. Y. 1946) p. 705.
56. *Ha-perushim v-Anshe Keneset ha-gedolah*, (N. Y. 1950).
57. *Toledot ha-yehudim b'eretz Yisrael b'tekufat ha-mishnah v'hatalmud*, Tel-Aviv, 1952. (Published by Hakibutz Hameuchad, Israel).
58. *Ibid.*, pp. 114-130, especially.
59. *Ibid.*, p. 114. See also p. 12.

EXCURSUS II: SYNEDRION IN CLASSICAL LITERATURE

1. *For the Soldier*, 9-11 (*LCL*, p. 189).
2. *Antidosis* 38 (Vol. 2, p. 307).
3. Isocrates does not merely differentiate between *synedrion* (council, assembly, session) and *dikastērion* (court). He lists here various types of tribunals in the Athenian system.
4. *Against Theocrines*, 1324 (*LCL*, III, p. 295).
5. Comp. McDonald, p. 296.
6. See *JQR*, Oct. 1946, p. 181, note 14a.
7. *Areopaticus* 38 (Vol. II, p. 126).
8. *Against Timarchus* 92 (*LCL*, p. 75).
9. 12 in Bekker, *Oratores Attici* III, p. 233, l. 20.
10. See Botsford and Robinson, *Hellenic History* (3rd ed., 1938), p. 77.

EXCURSUS III: SYNEDRION IN THE PAPYRI

1. 1522, "Process d'Hermias," *Notices Extraits des Manuscrits*, 219.
2. Tor. I col. II, l. 30.
- 2a. See Wilcken, *Urkunden der Ptolemaerzeit*, p. 62, No. 162: "Protokoll der Verhandlung von dem Epistates Herakleids;" *idem.*, *Sammelbuch Griechischer Urkunden* II, 4512, lines 56, 58; R. Revilleout, *Le Proces d'Hermias*.
3. 784, 6 (ed. Grenfeld, Hunt, Smyly).
4. 798, 26.

5. 717, 8, 11.
6. Comp. McDonald, pp. 295, 298: "The passage from the papyrus associates the synedrion with trials and it is well known that the bouleuterion at Athens was so used."
7. Cf. Taubenschlag, p. 367, note 20.
8. Semeka, *Ptolemaischen Recht*, p. 149. Cf. Josephus, *War I*, 537.
9. Cf. Zenon Papyri, I, 141, 1, 56. Moulton and Milligan, *Vocabulary of the Greek New Testament*, p. 36.

EXCURSUS IV: SYNEDRION IN THE SEPTUAGINT

1. Cf. I.C.C. *Proverbs*, p. 83.
2. B.K. 99b; Sanh. 29a.
3. Ket. 112a.
4. Comp. Baumgartner, p. 200; Wolfson, *JQR*, (July 1946), XXXVII, p. 87; C. Heller, *The Septuagint References in Mandelkern's Concordance, with elucidatory notes on the Bible* (N. Y., 1943), p. 14 n. 18.
5. Cf. I.C.C., *Proverbs*, p. 421.
6. In C.A. LXX, *synedrion* is omitted.
7. Cf. Burney, *The Book of Judges*, p. 123.
8. See the suggested interpretations in I.C.C., *op cit.* p. 492. Thus J-D, *s.v.* Σύνδρομος remarks, "The entire verse is corrupted, combining a traditional verse with one from which the LXX is translated."
9. On the relationship of the Syriac to the LXX, see Swete, p. 111; Churgin₁, p. 84.
10. *Commentar über das alte Testamente*, IV b. 3, p. 447.
11. Baumgartner, p. 230.
12. "Septuaginta und Targum zu Proverbia," *HUCA*, VIII, p. 190. See also Kaminka₂.
13. Cf. Heller, p. 38 note 36 who points out that it was customary for the translator to interchange *riv* and *din*.
14. See above Chap. I, note 51, and below *Exc. X*, and note 1 therein. See also Lehmann.

EXCURSUS V: SYNEDRION IN HEROD'S TRIALS

1. War 1.27.1 (537).
2. *Ibid.* 538.
3. *Ibid.* 539.
4. *Ibid.* 540.
5. *Ant.* 16.11.2.
6. Cf. *SZ*₁, pp. 46, 79.
7. *GJV* II p. 244.
8. Büchler, p. 223.
9. *Essai*, p. 150.
10. Graetz, III p. 207.
11. Juster I, p. 129.
12. I. 22.1 (434).
13. Cf. *SZ*₁ p. 45.
14. *War* I, 618.
15. *Ibid.* 620.
16. *Ibid.* 640.
17. I, 210.
18. XIV, 169.

EXCURSUS VI: SANHEDRIN IN TANNAITIC SOURCES

1. In Tos. Men 6.3 (519) the reading should be לשכת המלך instead of לשכת הגויים. See Zuck. *ad. loc.*
2. Mak. 7a.
3. Tos. Sanh. 3.11 (420) ר' דוסתאי בן יהודא אומר חיבר מיתות שברחו מן : תארץ לחוותה לארכ.
4. See above, Chap. XII, note 26b.
- 4a. See Sifre Deut. 17.9 and M. Sanh. 11.4.
- 4b. SZ₁₀, p. 196.
5. Sanh. 88b ; Tos. Hag. 2.9 (235) ; Tos. Sanh. 7.1 (425) ; Yer. Sanh. 19c.
6. P. 13.

EXCURSUS VII: THE GEROUSIA

1. Ex. 3.16, 18 ; 4.29 ; 12.21 ; 24.9 ; Lev. 9.1, 3 ; Num. 22.4, 7 ; Deut. 5.20 ; 19.12 ; 21.2 ; 3, 4, 6, 19 ; 22.15, 16, 17, 18 ; 25.7, 8, 9 ; 27.1 ; 29.9 ; Josh. 23.2.
- 1a. 4.8 ; 11.4 ; 15.8.
2. See Krauss, *JE*, V, 642 vs. Graetz's view that Judith was composed in the Trajan period. However, Clement of Rome (*ca.* 135 C.E.) already mentions it. See Schürer (*HJP*) II, III, p. 35 ; SZ₂, p. 33. Torrey, *The Apocryphal Literature*, p. 92, sets the date as the first half of the last century B.C.E. Cf. Pfeiffer, p. 295 ; Churgin₁, p. 136.
- 2a. T-Z, p. 202-3 note.
- 2b. *Ibid.*, p. 27-28 ; Churgin₁, p. 230 ff.
- 2c. SZ₅, p. 6.
3. Cf. Churgin₁, p. 253.
- 3a. On the date of the letter in the prologue see W. Kolbe "Bietrage zur Syrischen und Judischen Geschichte," "Kritische untersuchungen . . . zu den beiden ersten Makkabaerbücher," *Bietrage zu Weissenschaft v.O.T.*, 1926 (herausgegeben v. R. Kittel), pp. 107 ff., 118 ; F.u.G., on *II Macc.* 1.10, Vol. II, p. 36.
- 3aa. See *Biblische Studien*, Band 8, Heft 4, p. 6.
- 3ab. Cf. SZ₅ p. 40.
- 3ac. T-Z, p. 32.
- 3b. *Ibid.*, p. 46.
- 3c. Comp. Smith, p. 353.
- 3d. *Ant.* 4.8.14.
- 3e. *Ant.* 5.2.7.
- 3f. *Ant.* 5.11.2.
- 3g. *Ant.* 12.3.3 (138, 142).
4. This source does not show that Simon introduced a new Sanhedrin

(LF₂, p. 35) nor that he brought plebeians and patricians together (*ibid.*, p. 31) or that he changed Judea from an aristocracy to a monarchy (*ibid.*, p. 74).

- 4a. *Ant.* 13.5.8 (166).
- 4b. *War* 7.10.1; *Ant.* 19.5.
- 4c. Cf. SZ₈, p. 19; T-Z, p. 202 note on verse 12.6.
- 5. *Dictionary of Christ and Gospels*, II, s.v. "Sanhedrin."
- 5a. Guignebert, *The Jewish World in the Time of Jesus*, p. 50; Schalit, Hebrew translation of *Antiquities*, II, p. 85, note 126.
- 6. Comp. Smith, p. 193-209 ff.

EXCURSUS VIII: THE PRESBYTEROI

1. For *presbyteroi* in general sources see Sophocles, *Lexicon*, p. 916; F.u.G., III, p. 19 on verse I Macc. 1.26; Krauss, *J.E.* V, p. 642; D-BS p. 156.

2. *Presbyteroi* in I Macc.: 1.26; 7.33; 11.23; 12.35; 13.36; 14.20, 28. Since I Macc. was originally written in Hebrew, *presbyteroi* is a direct translation of *zekenim*.

- 3. Schürer, II, p. 241 n. 8; Kuenen, p. 66 n. 2.
- 4. *Aristeas* 310 uses it in connection with the translator and the Jewish community.
- 4a. *Ant.* 13.6.5.
- 5. See Büchler, p. 201 n. 180.
- 5a. Luke 22.66; Acts 22.5.
- 6. The various terms זקנים, שרים, ראשי אבות are found often in Ezra. These refer to the membership of the *gerousia*. Cf. Hoffmann₁, p. 33.
- 7. Yoma 1.1. זקנין ב"ד.

EXCURSUS IX: SYNONYMS OF SANHEDRIN

- 1. Cf. McDonald p. 296: Hesychius defines the word *synedrion* meaning "dicasterion."
- 1a. Cf. Roth, *Greek Papyri Lights on Jewish History*, p. 35.
- 2. Other MSS read differently. See Swete, I, p. 492.
- 2a. *War* III, 84.
- 2b. *Ibid.* I, 452.
- 2c. *Ibid.* IV, 335.
- 2d. *Ibid.* IV, 223.
- 2e. *Life*, 258.
- 3. *War*, I, 538. In *War* I, 537 *synedrion* is used instead. See also *ibid* I, 540.

4. *War*, I, 618. In *War* I, 620 *synedrion* is mentioned instead. See *ibid.* I, 640.
- 4a. In *War* I, 620 *synedrion* is mentioned instead. *Ibid.* I, 640.
5. See above Chap. I, note 32.
- 5a. מנוֹרָן בְּצֵד מִזְבֵּחַ. Mek-L (1, 41):
- 5b. See above, *Exc.* III.
6. The Targum reads נֶגֶד. Mek-L III, p. 14 has אֲלֵל הַמִּינִין.
7. Both *kritērion* and *synedrion* are found but the Codex Alexandricus omits them.
8. This is found only in the Alexandrian version; other MSS read *krisēis*.
9. Also in Daniel, *Theodotian* 7, 10 and 7, 26: *kriterion kathise*. See *Exc.* X, note 1.
10. *Synagoge* (assembly) is found in 60 and in LXX Daniel 4, 51a. In LXX, Susanna, it denotes a place.
- 10a. See *CAP* I, p. 644.
- 10b. See Vol. 7 (Index) of Philo.
11. *Ant.* 7.5.2 (133). Note *krisēis* and *synodon*. Comp. Matt. 5.22: *krisēi* and *synedrion*.
- 11a. It is recorded only in I Corinth. 6, 2-4 and James 2.6 which were probably composed outside of Judea.
12. For its use in Greek sources, see Sophocles, *Lexicon*, 315; LS-GL, p. 290. For the general opinion see Schürer, II, p. 246 and opposing view, Büchler, p. 233. Comp. McDonald, p. 297.
- 12a. 8.15; 8.19; 12.3.
- 12b. 15.25.
13. *De Vita Contemp.* 3, 27. See Wolfson, *JQR* (Jan. 1946) p. 305; *idem.* W-P, II p. 352.
- 13a. *War* I, 284; II, 209; VII, 65, 137, 121.
- 13b. *Ibid.* II, 273.
- 13c. *Ibid.* II, 331, 336.
- 13d. *Ibid.* VI, 354.
- 13e. 11.2.1 (22).
14. See *Ant.* 11.2.1 (22), LCL, VI p. 325, note g.
- 14a. *Ant.* 20.1.2.
15. Büchler, p. 203; SZ₁, p. 56.
16. Cf. Büchler, p. 233 n. 204.
17. See *Exc.* XIII.
18. *War*. 5.4.2; (144).
- 18a. *Ibid.* 5.13.1 (532); 6.6.3 (354).

19. *Ibid.* 2.15.6 (331).
20. *Ibid.* 2.14.8 (301).
21. *Ibid.* 2.16.2 (336).
22. *Life* 12; *War* II, 639 (council of six hundred members).
23. *Ibid.* III, 138.
24. *Mark* 15.43; *Luke* 23.50.
25. *War* 2.17.1 (405): *archontes kai bouletai*.
26. *Tos. Yoma* 1.1: (180). ר' עקיבא. In *Lam. Rabbati* I: קורא אתה לשכת בלווטין. והוון בירושלים ד' בלווטין. Comp. *Yer Ta'an.* 69a: בלאות שביהודה in *Yer. Ned* 38a, *Shab.* 34d. See *Klein* pp. 101, 255. Cf. *Dio Cassius* 66, 6 in *Reinach, Textes*, p. 193. See *Schürer*, p. 254; *NHWB.* 1, p. 199 ff; and *Allong* p. 20.
27. See *J-D* p. 146, s.v. בולבטס; *Yer Peah* 15c: רמא בן נתינה ראש פטרבולי היה. פעם אחת היתה אמו מסתרתו לפני בוליlon, p. 89.
- 27a. See above, Chap. IX (Bouleuterion).
- 27b. Comp. *McDonald*, pp. 297-8.
28. *Life* 12, 13, 38, 49, 60, 70 for "koine" of Jerusalem"; *Ibid.* 52, 60 for general usage.
29. *Büchlér*, p. 233.
30. Cf. *Hoffmann* p. 46.
31. *Sanh.* 1.6.
32. *Life* 39.
33. *K-DAC* p. 457.
34. See *Schürer* II, p. 247; *Smith*, p. 353 ff.
35. See above Chap. II, notes 8 and 24a.
36. See *SZ* 11, p. 311 for usage in *Philo*. See *W-P*, II p. 354.
- 36a. 4.59; 5.15.
37. *T-Z*, p. 113.
- 37a. *Ant.* 12.4.1 (164).
- 37b. *I Macc.* 14.19. Comp. *I Macc.* 12.35 and *Ant.* XIII, 181 for *ekklesia* and *synagoge* usage in verbal form.
- 37c. *I*, 654.
38. Cf. *LXX*, *Num.* 35.24; *I Macc.* 2.42; 3.44.
- 38a. *Ant.* 11.4.1 (75).
- 38b. *Ant.* 11.6.7 (288).
- 38c. *War* II, 285, 289.
39. See *M. Weinberg, Wohlgemuth's Jeschurin*, XVI, p. 240 ff.
40. Prov. 21.9; 25.24; בית חבר; טוב לשכת על פנת גג מאשת מונים ובית חבר. The Targum renders it as טרקא (palace); others explain it as "open house" or a "house not clean" or "together in the house." See *Churgin*, p. 80. *Albright*, p. 234 renders it "storehouse."

41. Cf. *ICC*, Prov. p. 401.
42. Ber. 4.7; Ber. 21a. Tos. Peah 4.16 (24); Meg. 27a; R.H. 34b; Shab. 7.9; Geiger, p. 122; J. Horowitz in *Festschrift, J. Guttmann*, (1915), p. 125; Chertoff, *JQR*, XXIV (July 1943), 87 ff.
43. See Geiger, (H), p. 81 for full discussion of *Heber*. He regards the priestly senate as the *heber* which later was adopted and developed by the Pharisees. Cf. Allong, p. 19 who regards *heber* as a synonym of *koinē*, meaning an institution and not the people. Klausner₁, III pp. 96-97 equates *heber*, Sanhedrin and Keneset ha-Gedolah. According to him "Sanhedrin" was the name given by Aristobulus.
44. Cf. Barong, Vol. I, p. 398 n. 23 and Vol. II, p. 404 n. 34.
- 44a. Cf. R. Gordis, "Democratic Origins in Ancient Israel — The Biblical Edah," AM-JV, p. 376.
45. Sanh. 1.6.
46. See Morgenstern, *Book of the Covenant*, HUCA, Vol. 8-9, p. 88; cf. Wolfson, *JQR*, XXXVII, p. 87.
- 46a. "Biblical Interpretation among the Sectaries of the Dead Sea Scrolls," *Biblical Archaeologist*, XIV, 3 (Sept. 1951) p. 59, note 16.
- 46b. See above, p. 140, sec. 6.
47. See SZ₅, p. 105.
48. On the Great Assembly see Krauss₂, p. 347; Moore, III, p. 7.
- 48a. Shabb. 15a, and LF₁, p. 51; See *Exc. XIV*.
49. Lichtenstein, p. 297 suggests such relationship.

EXCURSUS X: THE RABBINIC CHOICE OF "SANHEDRIN"

1. Josephus' use of *synedrion kathezein* may be a copy of LXX usage in Ps. 25 (26) 4; Jer. 15.17; Prov. 22.10, 31.23. See *Exc. IX*, note 9. Such usages are common in all legal domains. Cf. Lieberman₄, p. 43.

רבי אבוחה הוה יתיב ביזן הוּא ביזן עוֹשֶׂה לְזִין ביזן (Git. 4.2) or עוֹשֶׂה ביזן (Tos. *ibid.* 1.1 (323)), portray that smaller courts were temporarily convened, as in matters of arranging divorce bills, even before the days of Rabban Gamaliel the Elder. Cf. P. Dikshtein_c, p. 664.

2. Smith, *Dictionary of Greek and Roman Antiquities*, p. 429; SBH₁, p. 186, note 35.

3. Comp. LXX, Ps. 97.2: גָּדוֹק וּמְשֻׁפֵּט מִכּוֹן כְּסָאוֹ, *dikaisyne kai krima* or LXX Ps. 72.1.2: מְשֻׁפֵּט לְמֶלֶךְ תַּן וְצַדְקָתָךְ לְבָנֶךָ וְרוֹנוֹעֵם בְּצַדְקָתָךְ וְעֲוֵינִיךְ בְּמְשֻׁפֵּט. Comp. Ibn. Ezra *ad loc.*: וְצַדְקָתָךְ — וְשִׁיחִיה שׁוֹפֵט צְדָקָה. Cf. also Deut. 16.20: צְדָקָה שׁוֹפֵט תְּרוּדָה. The last after ביזן יפה.

4. See above, note 1.
5. *Ant.* 20.9.6.
6. Eduy. 8.5.
7. See contrary opinion of SZ₁₀, p. 195.
8. Yer. Sanh. 28a.
9. Comp. Sifre Numb. 11.16.
10. K-DAC, p. 454. RM, p. 7 n. 9 believes the changes occurred in the period of Hellenization.
11. Cf. Swete, *O.T. in Greek*, p. 10 ff. and Appendix, "Letter of Aristeas," p. XIII; also VT₁, p. 281; CAP II.
12. Greenwald, p. 39.
13. *The Psalms of Solomon, ad loc.*, 4.1.
14. DSH 10.3. See A. H. Habermann, *Edah we-Eduth*, (Three Scrolls from the Judean Desert), Jerusalem 1952, p. 52 n. 2.
15. W. H. Brownlee, "The Historical Allusions of the Dead Sea Habakkuk Midrash," BASOR, no. 126, April 1952, p. 14.

EXCURSUS XI: COMPOSITION AND NATURE OF THE SANHEDRIN

1. *Le Synhedrin*, p. 64.
2. *GJV*, II, 251.
3. *Geschichte*, p. 321. Allon₄, p. 118 follows the same view.
4. See Büchler, p. 231.

EXCURSUS XII: JOSEPHUS' THEOCRACY

1. *Ant.* 11.4.8 (111).
2. II, 17 (165).
3. *Ad. loc.*, J-LCL.
4. *Ant.* 20.10.1.
5. See above, note 1; also above, Chap. II.

EXCURSUS XIII: TRIPARTITE SYSTEM OF GOVERNMENT

1. See above, Chap. II, IV.
2. See also SZ₉, p. 5-6.
3. LF₃, p. 700.
4. *Legatio ad Gaium*, 36, 278.
5. *De Spec. Leg.*, IV, 164.
6. *Ant.* 4.8.14.
7. Deut. 17.9.
8. Cf. Büchler, p. 82, note 76; Schürer, II p. 245, Kuenen, p. 66. Note also Löw, IV p. 161 and Newman p. 77.

9. Hoffmann₁, p. 25.
10. Belkin, p. 84.
11. Comp. Weyl, *Strafgesetze bei Flavius Josephus*, p. 25 ff.
12. Wellhausen, p. 26.
- 12a. See above *Exc. VII*.
13. Jer. 29.15; Isa. 29.10.
14. I Sam. 28.6; 26.8,16; See also *Exc. XVI*.
15. W-P, II, p. 342.
16. Cf. Moore I, p. 261.
17. *Ant.* 9.3.7.
18. Comp. G. Greenberg, "Ha-malkut v-ha'kehunah v'ha-shilton ha-medini b'yisrael," *Sinai*, (1946-7), X.
19. *Ant.* 13.10.5.
20. *Ant.* 13.10.7.
21. *Ant.* 13.10.3.
22. Sot. 9.10.
- 22a. *Ant.* 20.1.2.
23. Yoma 7.5.
24. Cf. Ezra 2.63.
25. Hor. 2.7.
26. Tos. Sanh. 4.6 (421); Sanh. 48b.
27. Abot 4.19. Cf. Barong₃, Vol. II, p. 45: "While Sirach still considered the priests as the main teachers of the people, the Pharisaic leaders gradually evolved the doctrine of mutually independent crowns of kingdom, priesthood and Torah."
28. Comp. Yoma 72b. See also W-P, II, p. 343.
29. Sot. 45a.
30. *Sefer Yuhasin* 8a.
31. See *Exc. XIX*.
32. Klausner₁, III, p. 95, suggests that John Hyrcanus or Alexander Jannai built the Gazit Chamber but he does not substantiate it.

EXCURSUS XIV: THE GREAT ASSEMBLY

1. For a review of the many old theories on "The Great Synagogue" see H. E. Ryle, *The Canon of the O.T.* (1892), pp. 261-283; J. Guttmann "Ansche Keneset ha-gedolah," *Hashiloah*, XXI, p. 314 ff. See LF, *JBL*, 59 (Dec. 1940), p. 455; H. Englander, "The Men of the Great Synagogue," *HUC Jubilee Vol.*, pp. 145-169; Moore, III, pp. 8-11; LG, *Legends of the Jews*, VI, p. 447, note 56; SZ₄; Baron₂, III, p. 41 n. 24; and Barong₃, Vol. 1, p. 367 n. 5.
2. See the list in LF₁, Chap. IV and also his full bibliography on page 51.
3. Bickermann₂, p. 397 ff.
4. Isa. 60.4; Jer. 31.8; Eze. 39.27.

- 4a. SZ₁₆, p. 80.
5. Ezra 10.7.
6. Ant. 12.3.3.
7. Chap. X.
8. Cf. War, 2.20.3.
9. B-HDB, p. 398.
10. SZ₅, p. 105.
11. Abot I.
12. I Macc. 14.28.
13. Ant. 12.16.4.
14. I Macc. 5.15.
15. I Macc. 14.19.
16. LF₁, p. 56.

EXCURSUS XV: ESHKOLOT

1. See Derenbourg, pp. 456-460; Rappaport p. 308; Frankel₁, p. 43; Graetz₂, pp. 20-32; K-GL, s.v. אֲשָׁכְלָוֹת II, pp. 87, 135; Moore, III, p. 23; Laut.₄, p. 189; CT-H IV, p. 142 ff; LF₁, p. 41-42.
2. Geiger, p. 116 (H. p. 78).
3. Löw I, pp. 415.
4. "Ha-zugot v'ha-eshkolut," *Shahar*, Vol. 7 (5636), pp. 56, 112, 148.
5. Blum, p. 91, note 1.
6. Hoffmann₁, p. 38, note 1; Hoffmann₂, p. 38.
- 6a. In the Yerushalmi, the *Korban Edah* commentary changes the reading: *הַנּוּ אֵי אָפָשָׂר לִתְחַן בֵּין דָּופִי ... עַד שְׁעָם רַבְּבָא אָפָשָׂר לִתְחַן בֵּין דָּופִי*, thus conforming it to the Babli.
- 6b. It is to be noted that only the Yerushalmi Sotah 24a has the reading *zugot* whereas the Tosefta B.K. 8.13 (362) and Babli Temurah 15b read correctly *Eshkolot*.
7. Temurah 16b.
8. See, however, Geiger (H), p. 78 for different interpretations.
9. LF₁, p. 39.
10. ולא עבד אשכול עד שעמד ר' יע וכל הזוגות לא היו 가능한ות אלא אלו שמשו פרנסות וזרחות ואלו לא שמשו פרנסות.

EXCURSUS XVI: SOFERIM AND HAKAMIM

1. LF₁, p. 68.
2. LF₄, pp. 10, 11. Comp. Newman, p. 77.
3. Kelim 13.7; Sanh. 11.3; Orlah. 3.9. The Amoraim affixed the title Tannaim to the teachers who flourished after the destruction of the Temple and applied it especially to the members of the schools of Jabneh and

Usha. Hence, "Tannaim" is not mentioned in the Mishnah; it was not used by these scholars to identify themselves.

4. Ket. 82b, Shab. 16b.
5. Ket. 10a.
6. See e.g. R.H. 1.7.
7. Cf. Laut.1, p. 195; Laut.4, p. 30.
8. Kidd. 66a.

EXCURSUS XVII: SIMON THE JUST

1. See Krauss², p. 361 and *idem*, "Mattathias Maccabeus," *JE*, XIII, p. 378 on the textual changes.

EXCURSUS XVIII: THE CHAIN OF TRADITION

1. Cf. Loeb. See also above *Exc. I*.
2. LF₄.
3. See above Chap. IV.
4. Abot I: על ג' דברים העולם עומד על החורבה ועל העבודה ועל ג' ח.
5. *Gemilut hasadim* concerns itself with human welfare and public weal. See Suk. 49b, Ab.d. R.N. 4, 5; Sifre on Deut. 32, 39. It was also considered as a replacement of *abodah*. Cf. Moore II, 172, 3. On the communal activities of the *Heber*, see LG₁.
6. See above Chap. IV.
7. See *Life* 38.39.
8. Abot I. משה קבל... אנטיגנוס איש סוכו קבל משמעון הצדיק... יוסי בן יזעור איש צדקה ויוסי בן יוחנן איש ירושלים קבלו ממה... יהושע בן סרחה וגתאי הארబלי קבלו ממה... שמעיה ואבטילון קבלו ממה... היל ושמאי קבלו ממה רבן גמליאל אומר... שמעון בנו אומר. רבן שמעון בן גמליאל אומר.
9. רבן יוחנן בן זכאי קבל מהיל ושמאי.
10. LF₄, p. 6.
- 11a. In the instance of the Zugot, קבלו מום is used without mentioning the predecessors by name. In the case of Rabban Johanan b. Zakkai, there is a full statement of name. See above notes 9, 10.
12. R.H. 31a. מלשכת הגזית לחנות ומחנות לירושלים ומירשלים ליבנה a.
13. Abot I, end. על ג' דברים העולם קיים על הדין ועל האמת ועל השלום Bokser, p. 68, very strangely, regards Simon, the son of Gamaliel II as the author, whereas on pp. 126, 129 he quotes this under Simeon b. Gamaliel III. See his index and also p. 41 where he notes "Gamaliel I and his son Simeon."
14. Sanh. 37b. מיום שררב ביה עיי' שבטלה סנהדרין... דין ארבע מיתות לא. בפלנו.
15. The joint use of the terms *hesed* (kindness) and *emet* (truth) found so often in the Bible demonstrates the similarity in concept. We may

thus regard *emet* as a consequence of *hesed*; even as *din* is a result of *torah* and *shalom* is a result of *abodah*.

הנני נחתן לו את בריתך שלום והיתה לו ולו רצונו אחריו ביתך. כהונת עולם.

The priestly benediction (Num. 6, 26) is that of peace. Comp. Abot I. הָרַי מְתַלְמִצְיָו שֶׁל אַחֲרֵן אָוֹדֵב שְׁלָום וּרוֹזֵךְ שְׁלָום.

16a. Compare Yer. Taanit 68a: גַעֲשָׂה הָרִין גַעֲשָׂה אַמֶת גַעֲשָׂה שְׁלָום אָמֵר רַבִי מָנָא וְשְׁלָשָׁתּוּ בְפָסָקָה אַחֲרֵי אַמֶת וּמְשֻׁפֵט שְׁלָום שְׁפָטוּ בְשֻׁעָרֵיכֶם. The applicatory verse of Zech. 8.16 mentioned in the Abot text was a later addition. It is not cited by Rabban Simon ben Gamaliel but rather by Rabbi Mana, as noted in the Yerushalmi. See also Moore, 84-85, 180-197.

17. Peah 2.6 וְעַלְוָו לִלְשׁוֹת הַגִּנִית וְשָׁאַלְוָו אָמֵר נְחוֹם הַלְבָדָר מְקוּבָל אָנוּ מְרַבֵּי מִיאָשָׁא שְׁקָבֵל טָבָא.

18. *Ibid.* ...שְׁקָבֵל מִן הַזָּוּgoת שְׁקָבֵל מִן הַנְּבִיאוֹת הַלְכָה לִמְשָׁה מִסּוּנוֹ.

19. Tos. Sot. 13.2 (318); Sot. 48b; Sanh. 11a, Yoma 9b. See Moore I, pp. 237, 421 and Barons, Vol. I, p. 364 n. 26.

19a. See *Exc.* VII.

20. See *Exc.* XIV.

21. Meg. 17b, Yer. Meg. 70d; *Tad.* Introd.; H. Ryle, *The Canon of the O.T.* (London 1892), p. 268 ff; LF₁, p. 45.

21a. See discussion in Laut.4, p. 253.

22. I Macc. 14.28.

23. See above note 19. Cf. *ibid.* משנת חגי זכריה ומלאכי נביאים האחרוניים פסקה רוח הקודש מישראל וגוף על פ' בן חי משמעין להן בכת קול.

See also *Seder Olam Rabbah* XXV. Cf. Laut.4, p. 252.

24. Kid. 43a. שמאי הוזען אמר מפני חגי הנבייא.

25. Cf. LF₁, note 145.

26. See *Exc.* XIII and notes 13, 14, 15 therein. Cf. Barons, Vol. I, p. 333 n. 32.

EXCURSUS XIX: SIMON BEN SHATTAH

1. Yer. Sanh. 23c.
2. Comp. Frankel₁, p. 35; Yawitz, Vol. VI, p. 200, Note 2; LF₄, p. 14.
3. Comp. Morgenstern, *HUCA*, Vol. 8-9, p. 146, note 181; Greenwald, p. 54-55; LF₃, p. 707.
4. Chap. 4. בְּרִיךְ בְּתְמוֹן עֲדָא סְפַר גּוֹרְתָא.
5. Cf., however, SZ₅, p. 83; Moore, III, p. 27; H. Lichtenstein, *Die Fastenrolle*, *HUCA*, VII, p. 295.
6. Mak. 5b; Yer. Sanh. 23b.
7. Sanh. 19a.
8. Geiger applies this to Herod's trial before Hyrcanus II. See Geiger,

(H), *Prefaces*, p. 34, 94 and Klausner, *ibid.* in *Preface*, who disregards this notice.

9. Sanh. 6.4.
 - 9a. See *Exc.* XIII end.
 10. Ta'an. 3.8. Cf. Allon⁴, p. 124.
 11. Moore III, p. 119.
 12. *Ant.* 14.2.1.

EXCURSUS XX: AKABIAH BEN MAHALALEL

1. See J. Kaempf, *MGWJ* (1886) V, pp. 46-158; *JE*, III p. 115, Kaminka₁. Allon₄, p. 123 puts him in Temple days.
 2. LF₃, p. 705 ff. places Akabiah in the time of Rabban Gamaliel the Elder, but in LF₄, p. 62, he is described as opposing Hillel.
 3. See R-DS on *Eduyot* 5.6.
 4. Cf. SZ₁₅. See A. Marmorstein, *The Old Rabbinic Doctrine of God*, London 1927, p. 92. Comp. also MSS reading of Ber. 19a, with reference to Simon b. Shattah and Honi: **לפni המקוm אחתה מתחטא כבנָא**. The phrase **לפni המקוm** is a later interpolation.
 - 4a. See SZ₂₄, p. 21. Comp. Albeck₈, p. 511 and SL₁, p. 180.
 5. Hag. 2.2. **יג'א** מונם ונכns שפניא.
 6. *Eduy.* 5.6. **חוור בך ונוועך אביך בישראל**.
 7. See above, Chap. VIII.

EXCURSUS XXI: SHAMMAI AND BET SHAMMAI

1. See Frankel, p. 46; Halevy, Ic, Chap. 17; CT, "Mishnah Aharonah," *Memorial Volume for Moses Schorr*, 1945, p. 260. See also ROB and TYT on Hag. 2.2.
 2. See, however, LF4, p. 15, note 25 and RM, p. 32 n. 5, for different opinions.
 3. But see the various recensions of the text.
 - 3a. Erubin 13b.
 - 3b. For Hillel's humility see Shabbat 31a.
 4. LF4, p. 92.

EXCURSUS XXII: KING AND HIGH PRIEST

1. Cf. Goodenough², "Kingship in Early Israel," *JBL*, 1929.
 2. Sanh. 2.4: ישב בדין והוא עמו Comp. Deut. 17, 18.19.
 3. Sanh. 19a: אמר להו נפשה מלכה קTEL משום מעשה שהוא דעבדיה ר' נמי אמר ליה שמעון בן שוח לתקבבם חנו עיניכם בו גדורנו.
 4. *Ant.* 14.9.3.
 5. Comp. Greenwald, p. 58, note 64.
 6. Comp. Tosafot, Sanh. 18a, s.v. כי ג דין.

- 6a. Tos. Sanh. 2.15 (418): **אין מלך יושב בסנהדרין**.
7. Yoma 1.5. On the judicial power of kings, see W-P, II, p. 336; P. Dikshtein, *Hatekufah*, XXVIII, p. 374; Rackman, p. 159. On priests as judges see CT-H, II, 64 ff.
8. Tos. Sanh. 3.4 (418): **ואין מאמידין לא מלך ולא כהן גדול**.
9. I Macc. 14.28.
10. War 4.3.7 (154).
11. Sot. 7.8.
12. Yoma 1.1.
13. See *Ant.* 18.1.4.

EXCURSUS XXIII; "NASI" and "AB BET DIN"

1. Moore III, p. 63.
2. Albeck₁, p. 167. Comp. Kaminka_{3.4.5}
3. LF₁, p. 35.
4. SZ₄: **שמעון הצדיק היה מרישׁי בנות הגדולה**.
5. Hag. 2.2.
6. Shab. 15a.
7. I Sam. 10.12.
8. II Kings 5.2, 11.
9. "Nasi," JE, IX, p. 171.
10. "Abba, Father," JQR, OS, XIII, p. 570.
11. II Macc. 14.37. Cf. Frankel₃, pp. 347, 406.
- 11a. Yer. Ned. 39b: **אב לחכמתם אב לזרותם**.
12. Pes. 26a.
- 12a. Pes. 3b.
13. Yad. Hilkot Kiddush ha-Hodesh, Chap. IV, 10.
14. See also Albeck₁; LF₁, p. 31.
15. Josephus, *Life*.
16. Cf. *Midrash Tannaim*, ed. Hoffmann, p. 175. Cf. Allon₄, p. 56.
17. Kaminka₂, p. 70.
18. Allon₁, p. 157, note 16.
19. Büchler, p. 131.
20. Klein, p. 210 ff.
21. Tos. Sanh. 2.6. (416) **מעשה בריג והזקנים שהיו יושבים על גבי מעלות**.
- ה. Comp. Sanh. 11b and full discussion *ad loc.*
22. Hoffmann₁, p. 32. Cf. similarly Allon₄, p. 150.
23. SZ₂₀, p. 10, note 30.
- פ' והוא לו חבר ראב"ע שהיה נשיא עמו לכך: בתר דעברונו אמר באגמיה חכרייה.
25. *Imreh Binah*, (Zolkiew, 1849), No. 17, p. 35a.
26. LF₄, p. 61. See also Allon₄, p. 56.

27. *Tos. Sanh.* 8 (427).
28. *Yer. Sanh.* 19c.
29. See Brüll, p. 69.
30. *B.K.* 74b: *זה רבי יהושע אב"ד* הוא.
31. *LF₂*, pp. 126, 139. Cf. *CT-H IV*, p. 273; Halevy, p. 307; I. H. Weiss II; A. Sulzbach, "Gamaliel und R. Joshua," *Jeschurun* (1917), IV, p. 75 ff. Cf. *LF₄*, p. 31; Bokser, pp. 61, 62.
32. *Iggeret*, ed Lewin.
- 32a. *B.K.* 74b: *שלא בב"ד* הוא קאי. Comp. Z. Chayes *ad loc.*; Frankel₁, p. 88, note 4.
33. Albeck₁, p. 91.
34. Graetz₁, IV, p. 130.
35. *Scriptore Historiae Augustae*, LCL III, p. 339 and note on page 400.
36. Cf. Hor. 13b.
37. Cf. Allon₄, p. 293.

EXCURSUS XXIV: MUFLA

1. Commentary on Mishnah Sanhedrin.
2. *Smag* 97.
3. Comp. comments of *Be'er Shevah* and *Sha'ar Yosef* on Hor. 4b.
וַיְמִימָד אֶת מִמּוֹנָה עַל כָּלֵן הַוָּא הַנּוּשָׂא — ; אֶת מִמּוֹנָה עַל כָּלֵן הַוָּא מַוְפֵּלָא שְׁבָבֵץ אֶבְּגַז.
- See also discussion by SZ₁₉, p. 427.
5. Guttmann I, p. 82.
6. *Ma'amar al Inyanah Sanhedrin*.
7. Hoffmann₁, p. 36, note 3.
8. See above Chap. X, notes 83, 84, 85, 86. See above *Exc. XXIII*, notes 13, 14. Also Hor. 14; R.H. 2.7; *Tos. Sanh.* 7.1 (425): *הַן וּמוֹפֵלָא שְׁבָבֵן בְּגַז*.
- 8a. Cf. Rashi on Lev. 22, 21: *לְהַטְרִישׁ בְּרִיכְבוּרוֹ*.
- 8b. *שְׁנִים יְוּדִים לְבָרָךְ*. See above Chap. VII, notes 5, 48, 49.
10. Albright₁, p. 231.
11. *Ant.* 4.8.14. Kohler already attempted to prove the existence of an Ab Bet Din by identifying him with the "prophet" in the Josephus passage, but his proof is based on the talmudic haggada, *Yoma* 71b concerning the Urim v'Tummim. This does not pertain to the Second Temple Era, see above *Exc. XXIII*.
12. Cf. *Sanh.* 111b; Compare also *אֵין פְּלִילָה אֶלָּא דִינִים שְׁנָאָמָר וּנְחַנּוּ בְּפְלִילִים*.
וְפְלִילָוּ אַלְקִים

EXCURSUS XXV: THE "SEVENTY-TWO" IN JABNEH

1. *Zeb.* 1.3; *Yad.* 3.5; 4.2: *עֲבֵד זְקִנִּים*: *בַּיּוֹם שְׁהוֹשִׁיבוּ רַאכְעַז בִּישְׁבָה*.

2. LF₂, p. 128.
3. Cf. S. Funk, "Die Manner der grossen Versammlung," *MGWJ* (1911), pp. 33, 42; A. S. Karlin, "Die Mitgleiderzahl der Gerichtshofe," *MGWJ* (1913), pp. 24-31; S. Funk, "Noch einmal die Mitgleiderzahl," *ibid.*, pp. 501-506.
- 3a. *Der Galilaische Am. ha-Ares.*
4. Tos. III Kel. 2.4 (592). See discussion in Moore, III, p. 12.
5. Sifre Num. 95; Sanh. 17a.
6. Aristeas, p. 71-72 and note on v. 32 (p. 111).
7. Schreier, p. 407.
8. "Al mivneh ha-sanhedrin," *Hadoar*, June 29, 1945, No. 32.
9. Mekilta on Ex. 18.18 (ed. Laut. p. 181). גם אתה אתה זה משה. גם זה אתה. העם הזה אשר עטך אלו שבטים זקנים דברי רבי יהושע אמרתך. רבי אלעזר המודעי אומר אתה זה משה. גם זה אהרן וגם זה מזבב ואביהו. העם הזה אשר עטך אלו שבטים זקנים אמרתך.
10. Ibid., p. 185.
11. Gen. Rabbah 20.5: אין יהוה בר סימן בשם רבי יהושע מ恰恰ת הספר: ועוד כאן ע"א אזכור מגיד שניזון בסנהדרין שלמה
12. Cf. Allon₄, p. 121.
13. In Lud the basic number may have been *five*; in Jabnch, *thirty-two*, *thirty-eight* or *eighty-five*. See Allon₄, pp. 195, 293.
14. Ibid., p. 121 n. 22.

EXCURSUS XXVI: RABBI ELEAZAR BEN AZARIAH

1. Cf. below, note 10. See also Barons, Vol. II, p. 403 n. 30.
- 1a. See below note 4.
- 1b. See below note 5.
- 1c. Ber. 28a: **לאם לחוי ב' קיסר**.
- 1d. On this basis Allon's opinion (Allon₄, p. 200, note 22) may be disregarded. Rabbi Eleazar b. Azariah, though of priestly origin, was not chosen Nasi. Neither was the position of Ab Bet Din re-introduced then (note 42). Its reappearance comes only in the day of Rabban Simon b. Gamaliel II.
2. Ibid. לא ר' ג' לא מנע עצמו מבית המקדש אף שעה אותה.
3. Ibid. לא לו לדור שאתה פרנסו. This is contrary to the opinion of Büchler, *The Political and Social Leaders of Sepphoris*, p. 15, note 1.
4. Ber. 28a: **וניחא ליה למך ולהו ריש מתיבטה**.
5. Yer. Ber. 7d: **הלוינו רבי אלעזר בן עוריה בישיבה**.
6. Sanh. 4.4.
7. Zeb. 1.3; Yadim 3.5; 4.2. **בימים שהושיבו את ראב"ע בישיבה** R. Nissim Gaon in his commentary on Ber. 28a reads **בימים שהושיבו ראב"ע בראש**.

8. Ber. 28a.

9. *Ibid.* לזרוש ר'ג תלהא שבתא וראב"ע חדא שבתא.

10. LG₁, III, p. 208, also *ibid.*, p. 193 ff.

11. Yet LG₁, *ibid.*, thinks that the correct reading is ר'ג תרי שבתא rather than ר'ג תרי עבדתא. See also other explanations by LG₁, *ibid.*

12. Yer. Pes. 33a. ר'א ב"ע תנין הו. See, however, view of SZ₉, p. 10, note 28; also *JQR* (April 1943), p. 426.

13. Ie., p. 362, note 52.

14. According to tradition, R. Eleazar ben Azariah was a priest (see Ma'as. Sheni 5.9; Yer. Ma'as. Sheni 56c). This aristocratic origin, as a descendant of Ezra (Cf. Ber. 27b; Yeb. 16a; Hag. 3.2; Yer. Yeb. 9b) may have been one of the factors leading to his appointment as *Resh Methivta*.

Rabbi Eleazar ben Azariah is praised by Rabbi Joshua b. Hananiah with the words אָשֶׁר־קָרְבָּהּ אֲבֵינוּ שָׁלֹעַזְרָן צָרָה יִצְאָמְלָצֵץ. As such he is praised by R. Eleazar ben Aruk in the same way: אָשֶׁר־קָרְבָּהּ אֲבֵינוּ שָׁלֹעַזְרָן בֶּן־עֲרָקִי רַבִּי־חַנְגָּה.

Remarkably, Rabban Johanan ben Zakkai praises R. Eleazar ben Aruk in the same way: אָשֶׁר־קָרְבָּהּ אֲבֵינוּ שָׁלֹעַזְרָן בֶּן־עֲרָקִי רַבִּי־חַנְגָּה. Perhaps the misreading of ר'א ב"ע is the cause for the change of names (אלעוזר בן ריבוי—אלעוזר בן עריך). Likewise may have been interchanged with יוחנן בן זכאי, יהושע בן חנניה (ריביה).

15. Comp. Albeck₁, Zion, Vol. VIII, p. 166; Comp. Bokser, p. 63. See also full discussion in CT-H, IV, pp. 272-3 and R. Margolioth, פולילות, Jerusalem 5707, p. 44; also RM, p. 15 n. 38.

EXCURSUS XXVII: THE SEMANTICS OF DECISION

1. Comp. SL₂, p. 66, note 153: The verb חתך is explained like *krinein*, *decidere*, *decide*. Similarly פָּלַא means to cut, separate. So also with סירם as in Yer. Sanh. 18c; ולמה קוראו סירם שמסרס את halakah for it defines (literally: cuts) the halakah.

2. See *Aruch Completum* (1926) III, 270. Reifmann, p. 47 also interprets גור דין as גור דין, i.e., דין דין.

2a. See note in J-LCL, III, p. 243 for opinion on translation of Gazit. Klausner₁, III, p. 95, remarks that the Gazit Chamber was not constructed from stone.

2b. See *Exc.* VI.

3. Chap. 28. ר'א בן שמואל ג' מדו"ה כת"חaben גויתaben פיננהaben ספסס. גוית כת"ח שנייה מדרש בזמנ כת"ח נכנס אצלו שואלו במדרש אומר לו זה eben גויתשאין לו אלא פה זאת.

כorthi שכורותים דבריהם. פלחי שמוותאים (בדבריהם) מעתה.

In B.B. 133b also refers to decisions (cutting, *דיני חצצת בצע*). The expression also has the connotation of cutting and refers to decisions. Sanhedrin 6b: איזהו משפט שיש בו שלום (צדקה) هو אומר זה ביצוע Comp. Derenbourg, p. 45.

5. Pes. 66a.

6. Yer. Pes. 33a.

7. Tos. Pes. 4.1 (p. 162).

EXCURSUS XXVIII: PARHEDRIN: BET DIN SHEL KOHANIM

1. Allong, p. 19.

אותה לשכת העץ היא הייתה לשכת כהן גדול והוא לשכת פרהוריין דתנן בריש יומא.

TYT on Mid. 5.4 adds in the comparative identification of *Etz* and *Parhedrin*: הכי מסיק בגמרא פ"ק דיומא ד' יט. Comp. also T1, *ad loc.*

3a. Cf. Levy, *Mishna Abba Saul*; Oestersetzer, see below note 8.

אבא שאול היה קורא אותה לשכת בלהוטין בראשונה היו קוראין אותה לשכת בלהוטין ועכשו הן קוראין אותה לשכת פלהזרין — פראדיין מליא עכזא.

5. Comp. Yoma 8b.

6. Supplement to K-GL. Comp. Schürer, (*GJV*) II, 254.

7. S. Lieberman, *Tarbiz*, 1932, Vol. III, p. 304.

8. Oestersetzer, *Zion* IV, p. 304.

8a. See above note 1.

9. *Sinai*, Feb. 1946, Vol. 9, No. 5-6, p. 108-9

10. B-HDB.

11. Mishnah Commentary on Yoma 1.1.

12. Par. 3.10.

13. See TYT on Mid. 5.3.

14. Hollis, p. 345.

15. *Project of the Temple*, p. 355.

16. *Middot*.

17. See above Chap. IX.

18. P. 8a; (ed. Filipowski, p. 15, s.v. יוסי בן יעוז).

19. Comp. Allong, p. 21.

20. Büchler, p. 24.

21. Comp. Yoma 10a; Abudraham, p. 42.

22. "Sanhedrin," JE, XI, p. 42.

23. Comp. Tosafot Yoma 8b, s.v. ראי ר' חנינא.

23a. Were Lishkat ha-Etz a storage chamber for wood brought there on the 15 of Ab, a mezuzah would not be necessary.

23b. Cf. *Ant.* 18.1.4.

24. *Eduy.* 5.6.

25. Deut. 20.2: *ונגש הכהן ודבר אל העם*.

26. *De Spec. Leg.* III, 10.

27. Comp. CT-H, IV, p. 250.

28. *De Spec. Leg.* III, 53. The High Priest is not mentioned. Comp. the parallel phrase, Mishnah Sotah 1.4. See Belkin p. 86.

29. *Bn. Ummim*. See story in *Yoma* 71b.

30. *Yoma* 3.10; *Tos. Yoma* 2.3; *Yoma* 37b.

31. *Sot.* 9.4.

32. Par. 3.7: *וְמִסְמָאֵין הַיּוֹ אֶת הַכֹּהֵן הַשׁוֹרֵף אֶת הַפְּרָה מִפְנֵי הַצְדּוּקִים*

Tos. Par. 3.8 (632): *וְמִעֲשָׂה בְּצִדּוּקִי אֶחָד שְׁהֻעְרֵב שְׁמָשׁוּ וּבָא לְשׁוֹרֵף אֶת הַפְּרָה וְיַדְעַ בּוֹ רַבֵּן יְוחָנָן בֶּן זְכָאי*.

33. *Sanh.* 1.5. *אֵין מָזִיאֵין לְמִלְחָמָת רְשׁוֹת אֶלָּא עַיִּיף בַּיּוֹם שֶׁל עַיִּיא*.

33a. *ונגש הכהן ודבר אל העם*.

33b. *ונגש הכהן זה כהן משיח*.

34. See *SBHg*.

35. *Sot.* 42a. *אֵיךְ כָּהֵן בְּמִמְוֹתָה*.

35a. *Deut.* 20 ff. *שׁוֹטְרִים*.

36. *Sot.* 43a: *כָּהֵן מְדֻבֵּר וּשׁוֹטֵר מִשְׁמִיעַ*.

המ

37. See Geiger, p. 115.

38. Greenwald, p. 66.

39. See opinions listed in Newman, p. 74 ff.

EXCURSUS XXIX: PROCEDURE

1. Comp. Juster, II, 146.

שבהורה עד שהורו ב"ד שבשלכת הגות ובריני : *ונפשות נוגבין בכל מקום*.

2. Cf. Abrahams₁, p. 129-137.

3. Sanh. 5.5. *עד שיראה אחד מן המחייבין דברי המוכן*.

4. Sanh. 7.2 (425); Sanh. 35a and Tosafot, *ibid.* *אין דין שנים באחד אף' נואף ונואפת אלא דין את הראשון ואחיך השני*.

In case of a severe verdict, pronounced unanimously, the court was dismissed. Compare Sanh. 17a: *סנהדרין שרואו قولן לחובה פוטרין אותן*. See, however, different interpretations of the passage in *Kohelet ya'akob* of R. Jacob Algazi, quoting Rabbi Meir Abulafia; E-TIM on Ex. 23, 2 (No. 16) and S. K. Mirsky, "Meiri," *Talpiot* (July 1949), IV, p. 28.

See also E. Rackman, "Talmudic Insights on Human Rights," Judaism, Vol. 1, No. 2, Apr. 1952, p. 162.

6. Mak. 1.9: **שלא** תהא סנהדרין שומעת מפי המתורגמן.

7. Sanh. 7.1 **ארבע** מיתה נמסרו לבי' סקילה, שפטה הרג וחנק.

The dictum in Sanh. 9.5: **קנאים פוגעים בו** (lynching) suggests that when legal punishment could not be given the zealots took it in their own hands but could not be punished for their action.

8. Sanh. 48b. See also Tos. Sanh. 4.6 (421): **הרוגי ביז נסחין לירושין**.

9. Cf. SZ₁, p. 78.

10. Sanh. 48b: **הרוגי מלכות נסחין למלך**.

11. Mak. 3.11: **כיצד מלקין**. There are also stripes (*makkot mardut*) given for infraction of modesty etc., Kid. 7b.

11a. Comp. Ezra 7.26.

11b. Lev. 24.12; Num. 15.24.

11c. I Kings 22.27; II Chron. 16.10; Jer. 37.

12. Sanh. 9.5; Sanh. 81b: **מי שלקה ושנה מכניתין אותו לכיפה ההרוג נפש**. **שלא בעדים מכניתין אותו לכיפה**.

13. War II, 273: ". . . Who had been imprisoned for robbery by the local councils."

13a. See also the study by D. de Sola Pool, *Capital Punishment Among the Jews*, Bloch Pub. Co., N. Y. 1916, and the analysis of Mishnah Sanhedrin—Makkot by H. E. Goldin, *Hebrew Criminal Law*, N. Y., 1952.

14. Mak. 1.10 **סנהדרין גורנת אחת בשבוע נקורות חולניות**. **רבי אלעזר בן עורי** אומר אחד לשבעים שנה. **רבי טרכון ורבי עקיבא** אומרים אלף הינו בסנהדרין לא נהור אדם מעולם **רשבּן** אומר אף הם מרבית שופכי דמים בישראל.

15 *Ant.* 13.1.6: "It did not seem right to punish reproaches with death; and indeed the Pharisees even upon other occasions are not apt to be severe in punishments." Comp. *Ant.* 4.8.4 concerning *lex talionis*: "for the law makes the sufferer the judge of the value of what he both suffered and permits him to estimate it unless he will be more severe." This, perhaps, is according to Sadducean interpretation, though the Talmud in Baba Kamma mentions it as Rabbi Eliezer ben Hyrcanus' view only. The scholion on *Megillat Ta'anit* is based on this.

16. Sanh. 52b: **ואהבת לרעך כמוך ברור לו מיתה יפה**.

17. See above note 14; Cf. Bokser, p. 11.

18. Sanh. 6.1: **כל מי שיודע לו זכות יבא וילמד עליו**. Klausner, pp. 126, 133, regards Sanh. 6.1 as of no value in the face of the baraita of Sanh. 43a. See note 20 below.

19. M.K. 14b: **ר"ע אומר מניין לסנהדרין שהרגו את הנפש שאין טעמיין כלום**: **כל אותו היום תיל לא תאכלו על הדם**.

Rabbi Akiba probably saw the actual Temple procedure. See SBH₁, p. 169, note.

היוZA ליהרג משקין אותו קורט של לבונה בכוס של יין כדי שתרף ועתה... נשים יקרות שבירושלים היו מתנדבות וمبיאות אותן.

21. Mak. 1:8: בזמנם שהחרו בהן See comments of Pinneles, Sec. 115.

22. Mak. 3:10: כמו מלkin אותו ארבעים חסר אחת.

23. See full discussion by IH₃, I, p. XX.

24. Cf. II Cor. 11:24: "of the Jews five times received I forty stripes save one."

25. In civil cases, talmudic law probably effected a change in the composition of the court; a decline in number may have resulted from the gradual loss of power of the officials. When the elders served for all community problems, their duties included civil matters and hence there were seven in accordance with טביה העיר (Meg. 26a). Comp. Ant. 4:8.14. "Let there be seven men to judge in every city." When the community grew, civil cases were limited to mere judges of three; finally when the power of imposing fines was lost, only one judge remained. This ultimately became the practice in later talmudic days, was accepted in Babylon, and is even now. The judgments of civil cases as well as all matters of local interest were no doubt conducted in the Synagogue of the community. After 70 C.E. there were no "courts of twenty-three." See Allon₄, p. 109. For a study of the "seven judges," see *ibid.*, pp. 107-9.

26. Comp. Abrahams₁, p. 129; See also works of Waxman and Mendelsohn.

26a. Ant. 14:9.3.

27. Comp. H. Danby: "The Bearing of the Rabbinical Criminal Code on the Jewish Trial Narratives in the Gospels," *JTS* (Oct. 1919), XXI, p. 51-76.

27a. F. C. Grant, *An Introduction to New Testament Thought*, (N. Y. and Nashville, 1950), p. 95.

28. Sanh. 52b: אמר רב יוסף בר זעיר של צוקים היה. Cf. Chwolson, p. 118-125.

29. Klausner₂, p. 333. See Mommsen, V, 418.

30. Cf. Taubenschlag, p. 367; Husband, *Prosecution of Jesus*, 139.

31. SZ₁, pp. 81, 83, 192. Comp. RM, p. 9 n. 19. It is amazing that Allon₄, p. 191 interprets the Gospel trials as having come before the Great Sanhedrin!

32. "Der Prozess Jesu," *Sitz-Ber. d. Berl. Akad. phil-hist. Kl.*, 1931, XIV, pp. 313-32. See also review by F. C. Burkett, *JTS*, Vol. 33 (Oct., 1931), p. 64.

33. F. Büchsel, "Die Blutgerichtsbarekeit des Synedrions," *ZNW*, Vol. 31, (1931), p. 202, in a refutation of Lietzmann, declares that the Jews had no right. Lietzmann, *ZNW*, Vol. 31, p. 211, "Bemerkungen zum Prozess Jesu," and *ibid.*, Vol. 32 (1932), p. 78, "Der Kompetenz des Synedrion" sets forth his rebuttal. See also M. Goguel, "A propos du proces de Jesu," *ZNW*, Vol. 31, (1932), p. 289. Büchsel, "Noch einmal: zur Blutgerichtsbarekeit des Synedrions," *ZNW*, Vol. 33 (1934), p. 85," raises the question

whether *kathizein synedrion kriton* "eine Gerichteinsetzen" or "ein bestehendes Gericht zusammenrufen." (See also, above, *Exc. X*). See also H. J. Ebeling, "Zur Frage nach der Kompetenz des Synedrion." *ZNW*, Vol. 35 (1936), p. 290. See also Barons, Vol. II, p. 358 n. 19.

EXCURSUS XXX: THE ABOLITION OF CAPITAL PUNISHMENT

1. See SBH_g.
2. Ed. Hoffmann, p. 126.
3. The text of the Mekilta is quoted by Nachmanides on Numb. 35.29. Nevertheless, Epstein, in *Torah Temimah* on Ex. 21, 14 remarks: *כך הביא ר מבין בניומיקו בט מסע בשם מיכלתא ט' משפטים אבל לפניו חסורה*. Cf. I. Herzog, *תורת האהל*, I, p. 66 note.
4. Ta'an. 28b.
5. Cf. *Bitzaron* (Elul, 1941), p. 313; SZ, *Hadoar*, Nov. 1941, No. 13; *ibid.*, Jan. 1942, No. 7; *idem.*, *JQR* XXXV., Apr. 1945, p. 453. For a discussion of Origen's statement (*Responsis ad Africanum* 14) on capital punishment after 70 C.E.:—"Private trials are held according to the law, and some are condemned to death. And though there is not full licence for this, still it is not done without the knowledge of the ruler, as we learned and were convinced of when we spent much time in the country of that people."—see Allon₄, p. 130 ff.
6. *Hadoar*, Vol. 20, No. 43 (Nov. 1941); *JQR*, XXXI, Apr. 1941, p. 334.
- 6a. See Allon₄, p. 292 who maintains that even in the Hadrianic period the Bet Din convened in Jabneh or Lud and did not officially set its meeting-place in Usha.
7. B. M. 88a: *מן מה חרבי חנויות של בית הינו שלש שנים קודם ירושלים מפני שהעמידו דבריהם על דברי תורה.*
8. Shab. 14b.

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POSTSCRIPT

As this volume was coming off the press (June 1, 1953), Professor I. F. Baer's Hebrew essay, "The Historical Foundations of the Halacha" was received from Jerusalem. This latest study is published in *Zion*, XVIII, Numbers 1-4, 1952, pp. 1-5, (English Summary, pp. I-III) and is an elaboration of the theme previously printed in *Luah "Ha-aretz,"* Jerusalem 5712 (1951-2), pp. 130-148. Hence this supplemental note.

Baer seeks to prove that "a number of Halachot are . . . products of the Hasmonean period," and that these are related to "the legal and ritual institutions of the classical period of the Greeks." He correctly notes that "the Halachot relating to the Sanhedrin are real historical documents. The prime duty of a historian dealing with such precious documents is . . . fixing their place in reality." Baer shows that "the term [Sanhedrin] was also used for the Areopagus of Athens. In some of its functions, the Sanhedrin most closely resembled the Council of the Areopagus, as it is described by Aristotle and the Attic orators of the Fourth Century B.C.E."

This notion was already advanced by the present writer in his "Synedrion in the Attic Orators, the Ptolemaic Papyri and its adoption by Josephus, the Gospels and the Tannaim," *JQR*, XXXVII, Oct. 1946, p. 179ff.

Baer also asserts that "according to the concepts prevalent during the Second Temple period, the entire community [*edah*] is the decisive constitutional power. During the Hasmonean revolt it was a community of pious peasants organized as an army that took all political and religious authority into its hands. . . . The Sanhedrin is the highest representative institution of the entire nation. The High Priest and King are both subordinate to it. It is . . . an agency established to carry out a religious reform."

The historic background used by Baer for his argument is I Maccabees which describes the exploits of Judah Maccabee and his army. It should be noted, however, that *Sanhedrin* is never mentioned in that book; *gerousia* is recorded. In like fashion it is difficult to associate one of the first priestly heads of the Sanhedrin, Jose ben Joeser, with the Essenes [*Hasidim*: Baer's concept of "the community of pious peasants"] merely because *Hasid* is applied to that pious priest.

In general, the term used for the ancient biblical system of communal gathering or judging [*edah*] must be differentiated in historic perspective and time element from the all-inclusive priestly and aristocratic *gerousia* of pre- Hasmonean [and early Maccabean] days (see p. 8) and from the representative or democratic legislative *Sanhedrin* of the Second Commonwealth beginning in 141 B.C.E.

Baer shows (p. 5) that there were four constitutionalities in the Hasmonean period: the community [*edah*], the Sanhedrin, the priesthood and the monarchy. The last three were only agencies or representative bodies of the first. As already demonstrated in this volume, such analysis fits in with the view that a tri-partite government was established in 141 B.C.E.: the Sanhedrin (for religious legislation), the priesthood (for Temple ritual) and the political body, the *Heber* and later, the monarchy (for state administration). Nevertheless, such delineation does not harmonize with Baer's own opinion that "in the basic strata of the Mishna the Sanhedrin appears as the highest political-religious authority with control over all matters, both internal and external.

The view setting the origin of the Sanhedrin in Hasmonean days and depicting its representative nature and functions was first outlined by the present writer in his article "Sanhedrin," *Universal Jewish Encyclopedia*, 1943, Vol. IX, p. 361.

In comparing the texts of I Maccabees 3.18 and Mishnah Sotah 8.1, dealing with preparation for battle, Baer (p. 6) demonstrates the parallel usages of "Heaven" and *Makom* as names for God. He deduces that this similarity corroborates the early dating of both texts in the Maccabean period. An examination of the apocryphal

book, however, reveals that some manuscripts read "the God of Heaven," which indeed is already biblical usage (Gen. 24,3; Jonah 1,9; Ezra 1,2; Neh. 1,4; II Chron. 36,23). The change to "Heaven" may have been made by a later editor. The Mishnah Sotah text, on the other hand, as found in the Munich manuscript has the expression *the Holy One, blessed be He*, which is a late term. Similarly the usages of "Heaven" and *Makom* belong only to a very late period, i.e., after the Destruction of the Second Temple, when the mention of the divine name was deliberately avoided.

Baer suggests that "the structure of the Sanhedrin reminds [one of] the Platonian academy." That system, envisaged by Plato, was a philosophic blueprint for his ideal commonwealth. Being a supposition or a plan for the speculative life, without reference to any practical considerations, the Academy cannot be compared to the Sanhedrin which, Baer himself notes, is an "historic reality." During the Second Commonwealth the Sanhedrin was truly a body of sages with differing opinions. But the opposing parties therein represented respectively the conservative or progressive opinions in the interpretation of the practical law which was the daily Jewish "way of life," the *Halakah*.

In a long note [58, p. 17] Baer demonstrates that the authors of the Gospels and the Acts "were not familiar with the very nature and structure of the Sanhedrin which no longer functioned as a political institution and a criminal court in the time of Jesus and the Apostles. The accounts of Jesus' trial in the Gospels accordingly have no historic validity." In this manner Baer seeks to invalidate all the records of Josephus and the New Testament pertaining to judgment and rule, excepting the trial of Herod in *Ant.* 14.9.3, [See *Luah "Ha-aretz,"* p. 142].

The James passage (*Ant.* 20.9.1) too is considered by Baer to be a full interpolation in Josephus; hence the severity of the Sadducees in judgment "above all the rest of the Jews "as recorded in that passage is not acknowledged. This opinion is given despite the fact that Josephus uses the words "as we have already observed," apparently referring back to his previous statement in

Ant. 13.8.6 (294): "The Pharisees are naturally lenient in the matter of punishments."

A review of the history of the Second Commonwealth affirms, contrary to Baer's notion, that the Great Sanhedrin was *never* a political institution, even in the Hasmonean period. On the other hand, it did function as a court till 66 C.E. The historic evidence that the religious Sanhedrin was dissolved four years before the destruction of the Temple has already been demonstrated by the present writer in his Hebrew article, "The Last Days of the Great Sanhedrin," *Horeb*, III, N. Y., Apr.-Sept. 1936.